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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 1217.

CATHARINE A. METCALFE, MARY E. NOBLE, ET AL., APPELLANTS,

vs.

THE STEAMSHIP "ALASKA," HER ENGINES, &c., LADY D. E. PEARCE, SIR WILLIAM GEORGE PEARCE, JAMES ROBERTSON, AND RICHARD BARNWELL, EXECUTORS OF WILLIAM PEARCE, DECEASED, CLAIMANTS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 8, 1888.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, JANUARY 15, 1889.

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1 District Court of the United States, Southern District of New York. In Admiralty.

To the Hon. Addison Brown, judge of the district court of the United States for the southern district of New York:

The libel and complaint of Augustus Van Pelt, Francis Vogel, and Adolph Wolf, executors of the last will and testament of Christian Wolf, deceased; Mary E. Noble, administratrix of the estate of Ralph Noble, deceased; Catherine A. Metcalfe, administratrix of the estate of Thomas H. Metcalfe, deceased; Agnes Arnold, administratrix of the estate of Charles Arnold, deceased, and Mary Wolf against The British Steamship Alaska, her engines, boilers, tackle, apparel, and furniture, and against all persons lawfully intervening for their interests therein, in a cause of collision, civil and maritime, respectfully alleges and shows as follows, upon information and belief, viz:

First. That the said steamship Alaska is now lying in the port of New York, within the southern district of New York, and within the jurisdiction of this honorable court.

Second. That at the times hereinafter mentioned your libellants, Augustus Van Pelt and Henry Seguine, together with Stephen H. Jones, Christian Wolf, and Helen M. Simonson and Eckford W. Simonson, who are administrators of the estate of Sarah Adelaide Simonson, deceased, were the owners of the pilot-boat Colum-

2 bia, of New York, which vessel was then employed by them as a pilot-boat in the harbor of New York and adjacent waters, for which she had been duly licensed, engaged, among other things, in the carrying of pilots from the port of New York out to sea, beyond and over Sandy Hook bar, for the purpose of meeting vessels bound to said port of New York and piloting such vessels into said port of New York over said bar of Sandy Hook.

Third. That on the night of the second day of December, 1883, the said pilot-boat Columbia, which vessel was then and during all the times and occurrences hereinafter mentioned tight, staunch, strong, well and sufficiently manned and equipped, and in all respects fitted for the purposes aforesaid, and having on board, in addition to her crew, four duly licensed pilots, viz., the above-named Ralph Noble, Christian Wolf, Thomas H. Metcalfe, and Charles Arnold, was lying about fifteen miles off the coast of Long Island, New York, in a direction about south by east from Fire Island light-house; that the night was clear, cold, and freezing, with stars brightly shining, so that objects could be discerned by the naked eye for a long distance, and that such continued to be and was the case during the occurrences hereinafter stated. The wind was blowing a fresh gale from northwest and a rough sea was running; that during all of said night and during the time and occurrences hereinafter referred to the said pilot-boat Columbia had all her lights, as required by law, properly set and burning brightly.

Fourth. That between the hours of half past eleven o'clock *at* midnight, while said pilot boat was lying as before stated, her watch

discovered a steamship heading to the westward and bearing from said pilot-boat about northeast, which steamship afterwards proved to be the said steamship Alaska; that thereupon those on
3 board of said pilot-boat burned a flash light, which was the usual, legal, and proper signal to indicate to the said steamship that said Columbia was a pilot-boat, and thereupon said pilot-boat directed her course to the north and eastward, so as to intercept the said steamship, and continued to burn flash lights as rapidly as possible, as required by law, until the collision hereinafter mentioned occurred, as alleged.

That, having discovered the said flash light, said steamship, in answer to said flash light, burned a blue light, which is the usual and proper signal to indicate, and did and was intended to indicate, to said pilot-boat Columbia that she was recognized as a pilot-boat, and that the services of one of her pilots was desired by said steamship, and thereupon the course of the said steamship was changed more to the southward and westward so as to head nearly for said pilot-boat; that afterwards, when the said vessels had approached to within half a mile of each other, the said steamship placed a ladder and hung a light over the port (or her lee) side, which was a usual and proper signal to indicate to the approaching pilot that his services were requested, and that he was expected to board the said steamship at the place thus indicated; that when the said pilot-boat (as is customary and as was well known to those in charge of said steamship the said pilot-boat would do) came to be nearly ahead of said steamship the said pilot-boat Columbia launched her yawl, and the pilot and the yawl's crew got into her and were about leaving or had just left the said pilot-boat to board the said steamship when the said steamship, instead of stopping, continued to run ahead rapidly with her helm a-port, and ran into and collided with the said pilot-boat, striking her abaft amidships on her starboard side with great force, crushing in her side and causing the said pilot-boat and yawl rapidly to sink, whereby said pilot-boat Columbia and yawl, together with all of the personal property and effects of all
4 the persons on board, became a total loss, and whereby also all the pilots and all other persons on board of said pilot-boat and yawl were drowned.

Fifth. That under the circumstances, there being a gale of wind blowing and a rough sea running, it was the duty of those in charge and command of said steamship to exercise great care and stop said steamship still and not allow her to go ahead, and those in charge of said pilot-boat had the right to suppose, and did suppose and acted upon the supposition, that said steamship had come to a dead stop in order to allow the said pilot-boat to perform the duty of placing said pilot on board of said steamship (as by showing said blue light and placing said ladder and showing said light over the port side those in charge of said steamship had invited and requested) without embarrassment from the said steamship; but those in charge of said steamship did not exercise great care and did not bring the said steamship to a full stop, but failed to stop the engines

of said steamship or to back the said engines until it was too late to avoid the said collision.

Sixth. That the conduct of the said pilot-boat and of those in charge or command of her was usual, prudent, and proper in all respects and according to the well-known custom of placing pilots on board of vessels, and the said collision was not caused by any fault on the part of the said pilot-boat or of those on board or in charge or command of her; but, on the contrary, the said collision was caused solely by the fault and negligence and the improper and unseamanlike conduct of those on board and in charge and command of said steamship.

Seventh. That by the will of her late husband, Christian Wolf, which will was duly admitted to probate by the surrogate of
5 Kings county, New York, on the 10th day of January, 1884, your libellant, Mary Wolf, became the owner of that share of the said pilot-boat "Columbia" which was owned by her late husband at the time of his death by drowning as aforesaid, viz., one-sixth (or four twenty-fourths) thereof, and that she is still the owner of said share.

That your libellants, Francis Vogel and Adolph Wolf, are the executors of the said last will and testament of Christian Wolf, deceased, and were duly qualified as such by the surrogate of Kings county, New York, on the 10th day of January, 1884, and that at the time of his death by drowning as aforesaid the said Christian Wolf had property and personal effects on board of said pilot-boat Columbia, all of which were lost by reason of said collision, of the value of four hundred dollars, as your libellants are informed and believe, which amount your libellants are entitled to recover from said steamship.

Eighth. That your libellant, Mary E. Noble, is the administratrix of the estate of Ralph Noble, deceased, and was duly appointed as such by the surrogate of Kings county, New York, on the twenty-first day of December, 1883, and that the said Ralph Noble had on board of said pilot-boat Columbia, at the time of his death by drowning as aforesaid, property and personal effects of the value of four hundred dollars, as your libellant is informed and believes, all of which were lost by reason of the collision aforesaid, which amount your libellant is entitled to recover of said steamship.

Ninth. That your libellant, Catherine A. Metcalfe, is the administratrix of the estate of Thomas H. Metcalfe, deceased, and was duly appointed and qualified as such by the surrogate of
6 Richmond county, New York, on the twenty-first day of January, 1884; that the said Thomas H. Metcalfe, at the time of his death by drowning as aforesaid, had on board of the said pilot-boat "Columbia" property and personal effects of the value of four hundred dollars, as she is informed and believes, all of which were lost by reason of said collision, which amount your libellant is entitled to recover from said steamship.

Tenth. That your libellant, Agnes Arnold, is the administratrix of the estate of Charles Arnold, deceased, and was duly appointed and qualified as such by the surrogate of Richmond county, New

York, on the twenty-first day of January, 1884; that the said Charles Arnold had on board of said pilot-boat Columbia, at the time of his death by drowning as aforesaid, property and personal effects of the value of four hundred dollars, as your libellant is informed and believes, all of which were lost by reason of said collision, which amount your libellant is entitled to recover from said steamship.

Eleventh. That your libellant, Augustus Van Pelt, since the loss of said pilot-boat Columbia, has become and now is the owner of the interests in said pilot-boat formerly belonging to Mary J. Jones, administratrix of the estate of Stephen H. Jones, deceased; Helen M. Simonson and Eckford W. Simonson, administrators of the estate of Sarah Adelaide Simonson, deceased, and Henry Seguine, which, together with his own interests, amounts to twenty twenty-fourths of the whole of said pilot-boat.

Twelfth. That by reason of said collision your libellants sustained damages—that is to say, in the full value of the pilot-boat, which was sixteen thousand dollars, and in the said several amounts
7 for loss of personal effects and other property, amounting in all to the further sum of two thousand one hundred dollars, making the total damages resulting from said collision eighteen thousand one hundred dollars.

Thirteenth. That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore libellants pray that process in due form of law, according to the course and practice of this honorable court in cases of admirality and maritime jurisdiction, may issue against the said Steamship Alaska, her engines, boilers, tackle, apparel, apparatus, and furniture, and that all persons claiming any right, title, or interest therein may be cited to appear and answer under oath all and singular the matters aforesaid, and (whereas by the drowning of all of the said persons who were on board of the said pilot-boat at the time the said collision occurred your libellants are deprived of the testimony of many who would have been their witnesses) that the said claimants shall produce the log books (viz., the ship's log book and the engineer's log book) of the said steamship Alaska (or duly verified and sworn copies thereof) for the hours between 8 o'clock p. m. of December 2d, 1883, and 8 o'clock a. m. of December 3d, 1883 (being the hours between which the said collision occurred), and shall answer under oath the interrogatories appended to this libel and numbered from No. 1 to No. 4, inclusive, and that this honorable court will be pleased to decree the payment of the damages claimed as aforesaid to these libellants, with costs, and the libellants may have such other and further relief as in law and justice they may be entitled to receive.

AUGUSTUS VAN PELT.

8 Sworn to before me on this 12th November, 1884.

[SEAL.] EDWIN F. WRIGHT,
Notary Public (167), *N. Y. Co.*

WHITEHEAD, PARKER & DEXTER,
Proctors for Libellants, Nos. 59–61, Wall St., N. Y.

9 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Tuesday, the eighteenth day of November, in the year of our Lord one thousand eight hundred and eighty-four.

Present: The Honorable Addison Brown, district judge.

THE BRITISH STEAMSHIP "ALASKA," Her Engines, &c.,
ads.
AUGUSTUS VAN PELT *et al.*

And now James Price, intervening as agent for the interest of William Pierce in the said steamship Alaska, &c., appears before the honorable court and makes claim to the said steamship, &c., as the same are attached by the marshal, under process of this court, at the instance of Augustus Van Pelt *et al.*, and the said James Price avers that he was in possession of the said steamship at the time of the attachment thereof, and that the person above
10 named is the true and *bona fide* owner of the said steamship, and that no other person is the owner thereof, and the said James Price is the true and lawful bailee thereof as agent; wherefore he prays to defend accordingly.

JAMES PRICE.

WILCOX, ADAMS & MACKLIN,
Proctors for Claimant.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

James Price, being duly sworn, deposes and says that he resides in the city of New York; that he is the agent of the above-named William Pierce, the owner of said steamship, who resides at Glasgow, Scotland, and that this deponent is duly authorized to put in this claim in behalf of the owner of the said steamship, &c., and that the said claim is true of the knowledge of this deponent, except as to the matters therein stated on information and belief, and as to such matters he believes it to be true.

JAMES PRICE.

Sworn to and subscribed this 18th day of November, A. D. 1884, before me—

[SEAL.] CORNELIUS D. GOULD,
Notary Public, New York County.

11 District Court of the United States, Southern District of New York. In Admiralty.

AUGUSTUS VAN PELT and Others
against
THE BRITISH STEAMSHIP "ALASKA."

To the Honorable Addison Brown, judge of the district court of the United States for the southern district of New York:

And now come Catherine A. Metcalfe, who says she is the widow

of Thomas A. Metcalfe, deceased; Agnes Arnold, who says that she is the widow of Charles Arnold, deceased; Mary E. Noble, who says that she is the widow of Ralph Noble, deceased; Mary Wolf, who says that she is the widow of Christian Wolf, deceased, and Bella Forblade, who says that she is the widow of Harry Forblade, deceased, and state that their respective husbands were on board of the said pilot-boat Columbia at the time of the collision stated in the libel filed herein, and that all of their said husbands lost their lives by reason of said collision, and ask that they be made parties to said cause and for leave to file a supplementary libel herein on behalf of themselves, as individuals, and of their children.

WHITEHEAD, PARKER & DEXTER, *Proctors.*

12 *Supplementary Libel.*

District Court of the United States, Southern District of New York.
In Admiralty.

AUGUSTUS VAN PELT and Others, Libellants,
against
THE BRITISH STEAMSHIP ALASKA, Her Engines, etc.

To the Hon. Addison Brown, judge of the district court of the United States for the southern district of New York:

The supplementary libel of Catherine A. Metcalfe, Mary E. Noble, Agnes Arnold, Mary E. Wolf, and Bella Forblade against the said Steamship Alaska, her engines, boilers, tackle, apparel, and furniture, and against all persons lawfully intervening for their interests therein, respectfully alleges—

First. That the allegations contained in the first, second, third, fourth, fifth, and sixth articles of the libel against said Steamship Alaska heretofore filed in this cause on the 13th day of November, 1884 (to all of which reference is more particularly had), are true, as your libellants are informed and believe.

Second. That at the time of the collision in said libel mentioned Thomas A. Metcalfe (who was the husband of your libellant, Catherine A. Metcalfe, and her sole support) was a duly licensed pilot, and was engaged in the prosecution of his business and vocation as such licensed pilot on board of said pilot-boat Columbia; that by the fault, negligence, and unseamanlike conduct of those in charge and command of said steamship Alaska in causing said collision, and not by the fault or negligence of the said Thomas A. Metcalfe or of those in charge and command of the said pilot-boat Columbia, said Thomas A. Metcalfe lost his life by drowning, and by reason of his death so caused your libellant, Catherine A. Metcalfe, lost the support of her said husband and was deprived of his society, and became and was damaged in the sum of five thousand dollars.

13

Third. That at the time of the collision in said libel mentioned Charles Arnold (who was the husband of your libellant, Agnes

Arnold, and her sole support and that of her infant child, Harry Arnold, aged 3 years) was a duly licensed pilot, and was engaged in the prosecution of his business and vocation as such licensed pilot on board of the said pilot-boat Columbia.

That by the fault, negligence, and unseamanlike conduct of those on board and in charge and command of said steamship Alaska in causing said collision, and not by the fault or negligence of the said Charles Arnold or of those on board or in charge and command of said pilot-boat Columbia, said Charles Arnold lost his life by drowning, and by reason of his death so caused your libellant and her said infant child lost the support of her said husband and were deprived of his society, and became and were damaged in the sum of ten thousand dollars.

Fourth. That at the time of the collision in said libel mentioned Ralph Noble (who was the husband of your libellant, Mary E. Noble, and the sole support of herself and their daughter, Bella Noble, aged sixteen years) was a duly licensed pilot, and was engaged in the prosecution of his business and vocation as such licensed
14 pilot on board of the said pilot-boat Columbia; that by the fault, negligence, and unseamanlike conduct of those in charge and command of said steamship Alaska in causing said collision, and not by the fault or negligence of the said Ralph Noble or of any one else in charge and command of said pilot-boat Columbia, said Ralph Noble lost his life by drowning, and by reason of his death so caused your libellant and her said daughter lost the support of her said husband and were deprived of his society, and were damaged in the sum of ten thousand dollars.

Fifth. That at the time of the collision in the said libel mentioned Christian Wolf (who was the husband of your libellant, Mary Wolf, and her sole support and that of her five children, viz., Lena Wolf, aged 18 years; Christian Wolf, aged 16 years; William Wolf, aged 10 years; Louisa Wolf, aged 9 years, and Georgiana Wolf, aged 7 years) was a duly licensed pilot, and was engaged in the prosecution of his business and vocation as such licensed pilot on board of the said pilot-boat Columbia; that by the fault, negligence, and unseamanlike conduct of those in charge and command of said steamship Alaska in causing said collision, and not by the fault or negligence of the said Christian Wolf or of any one else in charge and command of the said pilot-boat Columbia, said Christian Wolf lost his life by drowning, and by reason of his said death so caused your libellant and their said children lost the support of her said husband and were deprived of his society, and became and were damaged in the sum of ten thousand dollars.

Sixth. That at the time of the said collision in said libel mentioned Henry Forblade (who was the husband of your libellant,
Bella Forblade, and her sole support and that of their infant
15 children, John Henry Forblade, aged seven years; Daniel Forblade, aged three years, and Caroline Forblade, aged two years) was the cook of said pilot-boat Columbia; that by the fault, negligence, and unseamanlike conduct of those in charge and command of said steamship Alaska in causing said collision, and not

by the fault or negligence of said Harry Forblade or any one in charge and command of the said pilot-boat Columbia, said Harry Forblade lost his life by drowning, and by reason of his death so caused your libellant and their said children lost the support of her said husband and were deprived of his society, and became and were damaged in the sum of ten thousand dollars.

Seventh. That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore libellants pray that process in due form of law, according to the course and practice of this honorable court in causes of admiralty and maritime jurisdiction, may issue against the said Steamship Alaska, her engines, boilers, tackle, apparel, and furniture, and that all persons having or claiming to have any right, title, or interest therein may be cited to appear and answer under oath all and singular the matters aforesaid, and that this honorable court will be pleased to decree the payment of the damages claimed as aforesaid to these libellants respectively, with costs, and that the libellants may have such other and further relief as in law and justice they may be entitled to receive.

By WHITEHEAD, PARKER & DEXTER,
Proctors for Libellants.

James Parker, being sworn, saith that he is one of the proctors for libellants; that the statements of the supplementary libel
16 are true, as he believes. The grounds of his belief are the investigations he has made and papers in his possession.

JAMES PARKER.

Sworn to before me on this 22d day of November, 1884.

[L. S.] EDWIN F. WRIGHT,
Notary Public, (167), *N. Y. Co.*

17 Exceptions and answer of William Pearce, of Glasgow, Scotland, the owner and claimant herein of the steamship Alaska, her engines, &c., to the libel and complaint of Augustus Van Pelt and others and the supplementary libel of Catharine A. Metcalfe and others against the said Steamship Alaska, her engines, &c., in a cause of collision, civil and maritime.

To the Honorable Addison Brown, judge of the district court of the United States for the southern district of New York:

He excepts to the said libel and supplemental libel—

(1.) In that at the time of the alleged collision herein the said steamer was a registered British steamer, owned by a person or persons subjects of Great Britain, and domiciled there, and that said alleged collision was on the high seas and not within the territorial limits or jurisdiction of the State of New York or of the dis-
18 trict court of the United States for the southern district of New York, and that this honorable court has no jurisdiction of this action.

(2.) In that in respect to the damages claimed in said libel and supplemental libel for loss of life this court has no jurisdiction.

First. In no way waiving the exceptions herein to said libel and supplemental libel, but expressly relying and insisting thereon the same as if no answer had been interposed herein, he answers in respect to the allegations contained in the first article of the libel that he admits the said steamer was lying in the port of New York at the time of the commencement of this action.

Second. He has no knowledge as to the allegations contained in the second article of the libel, and therefore leaves the libellants to make such proof thereof as they may be advised.

Third. He has no knowledge as to the allegations contained in the third article of the libel, except as is hereinafter stated and admitted, and therefore leaves the libellants to make such proof thereof as they may be advised.

Fourth. He has no knowledge as to the allegations contained in the fourth article of the libel, except that, as he has been informed and believes, a vessel showing the usual signals for a pilot-boat and being in about the same vicinity alleged in the libel and bearing about southwest from the said steamship, which said steamship was then on a course to the westward, the said supposed pilot-boat directed her course in the direction of the said steamer to intercept her, showing the usual pilot signal of the flash or flare-up light, to which the said steamer replied by showing a blue light to the said approaching vessel, supposing she was a pilot-boat, and
19 thereupon a light was hung or placed above the port or lee side of said steamer, which was the proper side for a pilot to board said steamer and for a pilot-boat to come alongside, and which light was to indicate to the said approaching vessel that the said steamer expected to be boarded on that the said port side. In respect to the remaining allegations of the said fourth article of the said libel the claimant leaves the libellants to make such proof thereof as they may be advised, except as herein stated or admitted.

Fifth. He has no knowledge as to the allegations contained in the fifth article of the libel, and therefore leaves the libellants to make such proof thereof as they may be advised, except that he denies, on information and belief, each and every allegation of neglect or want of care on the part of the said steamship or those having charge of her, or that said steamship did not stop or back her engines.

Sixth. He denies, on information and belief, the allegations contained in the sixth article of the libel.

Seventh. He has no knowledge as to the allegations contained in the seventh article of the libel, and therefore leaves the libellants to make such proof thereof as they may be advised.

Eighth. He has no knowledge as to the allegations contained in the eighth article of the libel, and therefore leaves the libellants to make such proof thereof as they may be advised.

Ninth. He has no knowledge as to the allegations contained in the ninth article of the libel, and therefore leaves the libellants to make such proof thereof as they may be advised.

20 Tenth. He has no knowledge as to the allegations con-

tained in the tenth article of the libel, and therefore leaves the libellants to make such proof thereof as they may be advised.

Eleventh. He has no knowledge as to the allegations contained in the eleventh article of the libel, and therefore leaves the libellants to make such proof thereof as they may be advised.

Twelfth. He has no knowledge as to the allegations contained in the twelfth article of the libel, and therefore leaves the libellants to make such proof thereof as they may be advised.

Thirteenth. He denies, on information and belief, the allegations contained in the thirteenth article, and in respect to the jurisdiction of this honorable court he does not admit the same, but leaves the libellants to make the same appear on the trial of this action as they may be advised.

Fourteenth. In respect to the allegations contained in the first article of the supplemental libel—

(1.) He excepts to the same in that as to the claim or claims therein mentioned this honorable court has no jurisdiction, and that the libellants have no remedy in admiralty *in rem*, as he is advised.

(2.) He further excepts to the same in that the said supplemental libel does not set forth facts sufficient to constitute a cause of action.

(3.) In that, as appears on the face of the said supplemental libel, the libellants have no cause of action, and he prays the same benefit of the above exceptions as if he had filed separate and independent exceptions herein.

Fifteenth. In no way waiving the exceptions herein, but expressly relying and insisting on each and every thereof, answering
21 herein, he denies the allegations contained in the first article of the said supplemental libel, excepting as herein admitted.

Sixteenth. He has no knowledge as to the allegations contained in the second article of the supplemental libel, and therefore leaves the libellants to make such proof thereof as *he* may be advised, except that he denies, on information and belief, that there was any fault, negligence, or unseamanlike conduct of those in charge and in command of the said steamship Alaska in causing said collision.

Seventeenth. He has no knowledge as to the allegations contained in the third article of the supplemental libel, and therefore leaves the libellants to make such proof thereof as they may be advised, except that he denies, on information and belief, that there was any fault, negligence, or unseamanlike conduct of those in charge and in command of the said steamship Alaska in causing said collision.

Eighteenth. He has no knowledge as to the allegations contained in the fourth article of the supplemental libel, and therefore leaves the libellants to make such proof thereof as they may be advised, except that he denies, on information and belief, that there was any fault, negligence, or unseamanlike conduct of those in charge and in command of the said steamship Alaska in causing said collision.

Nineteenth. He has no knowledge as to the allegations contained in the fifth article of the supplemental libel, and therefore leaves the libellants to make such proof thereof as they may be advised, except that he denies, on information and belief, that there was any fault, negligence, or unseamanlike conduct of those in charge and

in command of the said steamship Alaska in causing said collision.

22 Twentieth. He has no knowledge as to the allegations contained in the sixth article of the supplemental libel, and therefore leaves the libellants to make such proof thereof as they may be advised, except that he denies, on information and belief, that there was any fault, negligence, or unseamanlike conduct of those in charge and in command of the said steamship Alaska in causing said collision.

Twenty-first. The claimant denies each and every allegation contained in the seventh article of the supplemental libel, and leaves the libellants to make such proof thereof as they may be advised, both in respect to the facts and also as to the jurisdiction of this honorable court.

Twenty-second. Further answering herein, the claimant alleges, on information and belief, that since the time of the alleged collision herein the said steamer Alaska has been in the port of New York repeatedly, and that the libellants herein have had full opportunity to enforce their said alleged claims against the said steamer, if any existed, but that they neglected so to do; and, on information and belief, he further alleges that no claim was ever made on the owners of the said steamer for any loss or damage referred to in the libel, but, on the contrary, the said owners have been notified on the behalf of the libellants that they did not intend so to do, and the first intimation there ever was, as he is informed and believes, that any such claim would be made was by the commencement of this action.

He further answers that since the alleged collision and on or about the 11th day of October, 1884, he purchased the said steamer Alaska, her engines, tackle, apparel, and furniture, for a full consideration, without any notice whatever of any such alleged claim or claims, and that he had no knowledge thereof until the commence-

23 ment of this action, and that by reason of the laches of the libellants they have lost any lien or claim, if any they ever had.

Twenty-third. Further answering on information and belief, the claimant herein alleges that upon the night in question the Alaska was bound from Liverpool to New York; that the night was a very dark, starlight night, making it impossible to see opake objects except at short distances, but a good night for seeing lights; that the wind was blowing a very heavy gale from the northwest and causing a heavy sea, which broke in heavy masses over the starboard bow and stem, and so heavy that it threw the spray over the bridge; that not less than three officers were upon the bridge up to the time of the collision, one of whom was the master, besides two look-outs, one stationed upon the starboard and the other upon the port side of the bridge (it being impossible, owing to the violence of the wind and the roughness of the sea, to station a look-out upon the bow), and that all were carefully attending to their respective duties. The regulation lights of the steamer were set and carefully attended to, and were burning brightly at the time of the collision. The course of the steamer, up to the time she made Fire Island light, which

light she made before the collision, was about west half north, which was then changed to west by north. This course brought her within three points of the wind and her head nearly to the sea; that while in the above-named vicinity the light of a pilot-boat was made a long distance off, broad upon the port bow of the steamer, and she also showed a flash signal light to indicate that she was a pilot-boat, and immediately a blue light was burned on the steamer to show that she desired a pilot. The said supposed pilot-boat was off so broad upon the port bow of the steamer that had the steamer kept her course she would have passed well to the north of the
24 said pilot-boat, and under such circumstances the wheel was starboarded and her head changed to about west by south half south. The port gangway was manned, a light held over the lee side, and every necessary and usual step taken to receive the pilot.

The lee or port side was the side, as the weather was that night, for a pilot to board or a pilot-boat to approach, as no small boat could have lived upon the starboard side for any time. The engines were slowed down half speed, and the steamer running against the wind and sea, as she was that night, it slowed her speed much more rapidly than such a reduction of speed would under ordinary circumstances. The vessels at this time were still a long distance apart; that very shortly thereafter her engines were slowed down and the diminished headway of the steamer was still farther rapidly checked; that soon thereafter her engines were stopped, at which time the said steamer's headway was about stopped in the water.

That up to this time the said approaching vessel had borne several points off the port bow of the steamer (the orders to the wheelman of the steamer having been to keep such bearing), and the said pilot-boat was apparently approaching the steamer so that she would be on the lee or port side of the steamer, when and where the pilot should board her; and the steamer's wheel being slightly to port, and so kept, and the small boat of the supposed pilot-boat being momentarily expected to come in sight upon the port or lee side of the steamer, when suddenly and unexpectedly, when the vessels were very close together, the light of the supposed pilot-boat was seen to close rapidly in upon the course of the steamer and apparently to cross the steamer's bows, when immediately the steamer's engines were put full speed astern, and so continued until after the collision hereinafter stated, which took place about three
25 minutes after the engines were working full speed astern and when the headway of the steamer was stopped.

That the said change of course of the pilot-boat brought her into the wind, apparently, and directly across the bows of the steamer, when, having by this sudden manœuvre in the strong northwest gale found herself drifting down upon the steamer, she attempted to fill away, but continued to drift upon the steamer, and her starboard quarter struck the steamer's starboard bow, by which the pilot-boat was overturned and sunk, as believed, on such account, and by no other injury, as near as can be ascertained.

That the attempt of the pilot-boat to thus cross the bows of the

steamer from the lee to the weather side, not only in the danger of crossing or attempting to cross the bows of a heavy steamer in the night-time, but going from a comparatively smooth sea, which the lee side of the steamer afforded, into a rough sea, and which would place her where she could render no aid to the small boat, was to be and was entirely unexpected by those on board of the steamer.

That every exertion was made by those on the steamer, not only to avoid such collision, but to save the lives of those on board, but without avail. The life-boat was lowered and sent away, and the steamer remained in the vicinity of the said disaster until daylight, when she proceeded on.

Twenty-fourth The claimant denies each and every allegation contained in the said libel or supplemental libel contrary to the foregoing statement of the collision and which is not herein expressly admitted.

Twenty-fifth. That all and singular the premises are true.

26 Wherefore the claimant prays the dismissal of the libel herein, with costs.

WILCOX, ADAMS & MACKLIN,
Claimant's Proctors.

WILCOX, *Advocate.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Franklin A. Wilcox, being duly sworn, deposes and says that he is one of the firm of Wilcox, Adams & Macklin, proctors for the claimant in the above-entitled action; that he has read the foregoing answer and knows the contents thereof, and that the same, to the best of his information and belief, is true; that his belief is grounded upon information derived from the agent of the claimant and from correspondence and statements; that the claimant's place of residence is in Glasgow, Scotland, where he now is.

F. A. WILCOX.

Sworn to before me this 2d day of February, 1885.

[L. S.] CORNELIUS D. GOULD,
Notary Public, New York Co.

WILCOX, ADAMS & MACKLIN,
Proctors for Claimant, 69 Wall Street, New York City.
WILCOX, *Advocate.*

27 At a stated term of the district court of the United States of America for the southern district of New York, in admiralty, held in the United States court-room, in the city of New York, on the 17th day of February, in the year one thousand eight hundred and eighty-seven.

Present: Hon. Addison Brown, district judge.

AUGUSTUS VAN PELT *et als.*
against
THE STEAMSHIP "ALASKA," Her Engines, &c., &c.

The above-entitled suit having been heard upon the pleadings

and proofs, and an interlocutory decree having been entered therein, bearing date the 27th day of May, in the year one thousand eight hundred and eighty-six, whereby it was ordered, adjudged, and decreed that the collision mentioned in the pleadings and the damages caused thereby were caused, occasioned, and incurred by and through the mutual fault of the steamship "Alaska" and the pilot-boat or schooner "Columbia" in said pleadings mentioned; and it was therefore ordered, adjudged, and decreed that the libellants, Augustus Van Pelt and Mary Wolf, as owners of said schooner "Columbia," and libellants, Francis Vogel and Adolphus Wolf, executors of the last will of Christian Wolf, deceased; Mary E. Nobie, administratrix of the estate of Ralph Noble, deceased; Catharine A. Metcalfe, administratrix of the estate of Thomas H. Metcalfe, deceased; Agnes Arnold, administratrix of the estate of
28 Charles Arnold, deceased, and Bella Forblade, administratrix of the estate of Harry Forblade, deceased, recover of said steamship "Alaska" one-half of the damages by them severally sustained by reason of the matters by them alleged in their said libel, according to their several interest and amounts of damages; and by said interlocutory decree it was further ordered, adjudged, and decreed that Catharine A. Metcalfe, widow of Thomas H. Metcalfe, deceased; Agnes Arnold, widow of Charles Arnold, deceased, for herself and her infant son, Harry Arnold, also the child of said Charles Arnold; Mary E. Noble, widow of Ralph Noble, deceased, for herself and her infant child, Bella Noble, also the child of said Ralph Noble; Mary Wolf, widow of Christian Wolf, deceased, for herself and her infant children, Lena Wolf, Christian Wolf, William Wolf, Louisa Wolf, and Georgiana Wolf, also children of said Christian Wolf, and Bella Forblade, widow of Harry Forblade, deceased, for herself and her infant children, John Henry Forblade, Daniel Forblade, Caroline Forblade, and Harry Forblade, also children of said Harry Forblade, do each and all of them recover one-half their damages by each and all of them severally sustained by reason of the matters by each and all of them severally alleged in the supplemental libel by them in said cause filed; and by said interlocutory decree it was further ordered, adjudged, and decreed that said Steamship "Alaska" be condemned to pay the said one-half of the said several amounts of damages; and by said interlocutory decree it was further ordered that it be referred to Samuel H. Lyman, Esq., one of the commissioners of said court, to take proof of the several interests of the respective libellants, to ascertain the several amounts due to them for their damages upon their several interests as the same shall appear, and report with his opinion thereon, and that said commissioner take proof of the in-
29 terests and kinship of said several libellants as in said libel and supplemental libel set forth;

And the report of the said commissioner, bearing date the nineteenth day of November, 1886, having been presented to the court and filed, from which report it appears that the value of the said schooner "Columbia" immediately previous to the said collision, viz., upon December 2d, 1883, was the sum of twelve thousand dollars, and

that the said vessel was owned by the libellants, Augustus Van Pelt, five-sixths thereof, and Francis Vogel and Adolph Wolf, as executors of the last will of Christian Wolf, deceased, one-sixth, and that in accordance with said interlocutory decree the said Augustus Van Pelt was entitled to recover, as the one-half of the value of his said five-sixths, the sum of five thousand dollars ($5,000), and the said Frances Vogel and Adolph Wolf, as executors aforesaid, the one-half of their one-sixth, the sum of one thousand dollars ($1,000);

And it further appearing from the report that the libellants, Francis Vogel and Adolph Wolf, as executors of the estate of Christian Wolf, deceased, are entitled to recover, as the one-half value of the personal effects of said Christian Wolf lost by said collision, the sum of one hundred forty-six and $\frac{25}{100}$ dollars ($146.25); that the libellant, Mary E. Noble, as administratrix of the estate of Ralph Noble, deceased, is entitled to recover, as the one-half value of the personal effects of said Ralph Noble lost by said collision, the sum of one hundred and fifty dollars ($150); that the libellant, Catharine A. Metcalfe, as administratrix of the estate of Thomas H. Metcalfe, deceased, is entitled to recover, as the one-half value of the personal effects of said Thomas H. Metcalfe lost by said collision, the sum of sixty-seven and $\frac{50}{100}$ dollars ($67.50); that the libellant, Agnes Arnold, as administratrix of the estate of Charles Arnold, de-
30 ceased, is entitled to recover, as the one-half value of the personal effects of said Charles Arnold lost by said collision, the sum of one hundred and thirty-eight $\frac{75}{100}$ dollars ($138.75); and the libellant, Bella Forblade, is entitled to recover, as the one-half value of the personal effects of said Harry Forblade lost by said collision, the sum of forty-five dollars ($45);

That the libellant, Catharine A. Metcalfe, is entitled, as the widow of Thomas H. Metcalfe, to recover as damages for the loss of the support of her husband, Thomas H. Metcalfe, who lost his life by said collision, the one-half of her said damages, being the sum of two thousand four hundred and twenty and $\frac{28}{100}$ dollars ($2,420.28); that the libellant, Agnes Arnold, as the widow of Charles Arnold, deceased, for herself and her infant son, Harry Arnold, also the son of said Charles Arnold, is entitled to recover as damages for the loss of support of her husband, Charles Arnold, who lost his life by said collision, one-half of the sum which under the statute of the State — New York is fixed as the limit of damages to the widow and next of kin to be awarded in such cases in State courts, viz., the sum of two thousand five hundred dollars ($2,500), and that, but for the analogy which this limitation by statute affords, said widow would be entitled to recover under said interlocutory decree, as the one-half of her said damages, the sum of five thousand three hundred and $\frac{40}{100}$ dollars ($5,300.40); that libellant, Mary E. Noble, as the widow of Ralph Noble, deceased, for herself and her daughter, Bella Noble, also the daughter of said Ralph Noble, is entitled to recover, as the one-half of her damages for the loss and support of her said husband, who lost his life by said collision, the sum of two thousand two hundred and eighty-nine and $\frac{23}{100}$ dollars ($2,289.23); that libellant, Mary Wolf, widow of Christian Wolf, deceased, for herself and her infant chil-

dren, Lena Wolf, Christian Wolf, Wm. Wolf, Louisa Wolf,
31 and Georgiana Wolf, also the children of said Christian Wolf, who lost his life by said collision, is entitled to recover, as damages for the loss of support of her said husband, one-half the sum which under the statute of the State of New York is fixed as the limit of damages to be awarded to the widow and next of kin in such cases in the State courts, viz., the sum of two thousand five hundred dollars ($2,500), and that, but for the analogy which the limitation by statute affords, said libellant, Mary Wolf, would be entitled to recover, as the one-half of her said damage, the sum of six thousand six hundred eighty-six and $\frac{44}{100}$ dollars ($6,686.44); that said libellant, Bella Forblade, as the widow of Harry Forblade, deceased, for herself and her infant children, John Henry Forblade, Daniel Forblade, Caroline Forblade, and Harry Forblade, also children of said Harry Forblade, who lost his life by said collision, is entitled to recover, as the one-half of her damage for loss of support of her said husband, the sum of two thousand five hundred dollars ($2,500), and that, but for the analogy which this limitation of statute of the State of New York affords, said widow would be entitled to recover, as the one-half of her said damages, the sum of three thousand two hundred and eighty-one and $\frac{25}{100}$ dollars ($3,281.25), and that all of said several sums are recoverable, with interest from December 2, 1883;

To which report of said commissioner all of said libellants excepted for reasons stated in their said exceptions, duly filed, reference thereto being had, and to which report of said commissioner claimant also excepted for reasons stated in his said exceptions, duly filed, reference thereto being had;

Which said exceptions of libellants and claimant were all, after argument thereon, overruled, and the report of said commissioner in all respects confirmed, except that the title to said one-sixth share in said pilot-boat "Columbia" is found by the court to be in the
32 libellant, Mary Wolf, and not in libellants, Francis Vogel and Adolph Wolf, as executors of the last will of Christian Wolf, deceased, and except also as to the claims of said Catharine A. Metcalfe, as widow of said Thomas H. Metcalfe; Mary E. Noble, as widow of said Ralph Noble; Mary Wolf, as widow of Christian Wolf; Agnes Arnold, as widow of Charles Arnold, and Bella Forblade, as widow of Harry Forblade, for and on behalf of themselves and their said children, respectively, for loss of support of their respective husbands, in which respect claimant's exceptions are sustained:

Now, therefore, on motion of Messrs. Whitehead, Parker, and Dexter, proctors for the libellants, it is—

Ordered, adjudged, and decreed that the said libellants do respectively recover from said Steamship "Alaska" and its stipulators the following sums, subject to hereinafter reduction in the matter of costs, viz:

Augustus Van Pelt, as owner of one-sixth of said pilot-boat "Columbia," the sum of five thousand nine hundred and fifty-eight dollars	$5,958 00

Mary Wolf, as owner of one-sixth of said pilot-boat "Columbia," the sum of eleven hundred and ninety-two dollars 1,192 00

Francis Vogel and Adolph Wolf, as executors of the last will of Christian Wolf, deceased, for loss of personal effects, the sum of one hundred and seventy-four dollars 174 00

Catharine A. Metcalfe, administratrix of the estate of Thomas H. Metcalfe, deceased, for loss of personal effects, the sum of eighty dollars 80 00

Mary E. Noble, administratrix of Ralph Noble, deceased, for loss of personal effects, the sum of one hundred seventy-eight and $\frac{75}{100}$ dollars 178 75

33 Agnes Arnold, administratrix of Charles Arnold, deceased, for loss of personal effects, the sum of one hundred and sixty-five dollars 165 00

Bella Forblade, administratrix of Harry Forblade, deceased, for loss of personal effects, the sum of fifty-three dollars 53 00

It is further ordered, adjudged, and decreed that the supplemental libel of Catharine A. Metcalfe, widow of Thomas H. Metcalfe; Mary E. Noble, widow of Ralph Noble; Mary Wolf, widow of Christian Wolf; Agnes Arnold, widow of Charles Arnold; and Bella Forblade, widow of Harry Forblade, claiming damages on behalf of themselves and their said children for loss of the support of their respective husbands, whose lives were lost by said collision, be dismissed without costs against them or either of them.

It is further ordered, adjudged, and decreed that the libellants' costs herein, taxed at the sum of five hundred and seventy-three and $\frac{70}{100}$ dollars ($573.70), and the claimant's costs herein, taxed at the sum of seven hundred and seventy-nine $\frac{47}{100}$ dollars, be apportioned between the parties—that is to say, that one-half of the difference in favor of the claimant, viz., the sum of one hundred and two $\frac{88}{100}$ dollars, be deducted from the amounts decreed in favor of the libellants, and their said amounts deducted in proportion they bear to the whole, leaving the amounts to be recovered hereunder by the said libellants as follows, viz:

Augustus Van Pelt	$5,878 81
Mary Wolf	1,176 16
Francis Wolf and Adolph Wolf, as executors, &c.	171 69
Catharine A. Metcalfe, as administratrix, &c.	78 94
Mary E. Noble, as administratrix, &c.	176 37
Agnes Arnold, as administratrix, &c.	103 60
Bella Forblade, as administratrix, &c.	52 30

34 It is further ordered, adjudged, and decreed that unless an appeal be taken from this decree within the time limited by law and as prescribed by the rules of this court the claimant's stipulators, for costs and value herein, cause the engagements of their stipulations to be performed.

ADDISON BROWN.

Notice of Appeal.

District Court of the United States for the Southern District of New York. In Admiralty.

AUGUSTUS VAN PELT *et als.*
against
THE STEAMSHIP "ALASKA," &c., &c.

The libellants all appeal from the final decree entered in this cause February 18th, 1887, to the next circuit court.

Dated New York, February 26th, 1887.

WHITEHEAD, PARKER & DEXTER,
Proctors for Libellants.

To Samuel H. Lyman, Esq., clerk of said court.
To Messrs. Wilcox, Adams & Macklin, proctors for claimant.

Take notice that a notice of appeal, of which the above is a true copy, has this day been filed in the office of the clerk of said
35 district court of the United States for the southern district of New York.

Dated New York, February 26th, 1887.

WHITEHEAD, PARKER & DEXTER,
Proctors for the Libellants.

Service of a copy of the above notice of appeal is hereby admitted as of this date.

Dated New York, February 26th, 1887.

WILCOX, ADAMS, & MACKLIN,
Proctors for Claimants.

District Court of the United States for the Southern District of New York.

AUGUSTUS VAN PELT *et al.*
against
THE STEAMSHIP "ALASKA," Her Engines, &c.

SIRS: You will please take notice that the claimant herein hereby appeals to the next circuit court of the United States for the southern district of New York from each and every part of the final decree entered herein on the 18th day of February, 1887.

Yours, etc., WILCOX, ADAMS & MACKLIN,
Proctors for Claimant.

Dated New York, February 28, 1887.

To Messrs. Whitehead, Parker & Dexter, proctors for libellants.
To Samuel H. Lyman, Esq., clerk.

36 At a stated term of the district court of the United States for the southern district of New York, held at the United

States court-rooms, in the city of New York, on the 28th day of February, 1887.

Present: Hon. Addison Brown, judge.

VAN PELT and Others *against* S. S. "ALASKA," &c.

Upon the annexed consent it is ordered—

1st. That the libellants may amend their libel so that the claim for loss of lives shall be ten thousand dollars instead of five thousand dollars.

2d. That the claimant may amend his answer so as to plead the law of Great Britain as applicable to the steamer in the action.

3d. That no further security will be required on the appeal about to be taken by the parties to the action, either for costs or otherwise.

ADDISON BROWN.

We hereby consent to the entry of the above order.

Dated February 11th, 1887.

WHITEHEAD, PARKER & DEXTER,
Proctors for Libellants.

WILCOX, ADAMS & MACKLIN,
Proctors for Claimant.

37 Circuit Court of the United States, Southern District of New York.

AUGUSTUS VAN PELT *et al.*, Libellants and Appellants,
against
THE STEAMSHIP "ALASKA," Her Engines, &c.; WILLIAM PEARCE, Claimant and Appellant.

To the circuit court of the United States for the southern district of New York:

The appeal of William Pearce, claimant of the above-named steamship "Alaska," her engines, &c., shows—

That on or about the 13th day of November, 1884, Augustus Van Pelt and others, the libellants herein, filed their libel, and on the 21st day of November, 1884, their supplemental libel, in the district court of the United States for the southern district of New York against the above-named steamer "Alaska," her engines, &c., claiming over fifty dollars, and praying, among other things, that said steamer be condemned to pay the libellants' claim, with costs, as by reference to said libel and supplemental libel will more fully appear.

That the present claimant and appellant duly appeared in said suit and, on or about the 3d day of February, 1885, duly filed his answer to said libel and supplemental libel, praying that the same be dismissed with costs, as by reference thereto will more fully appear.

That thereafter, on or about the 19th day of October, 1885, the cause came on to be heard before the Hon. Addison Brown, dgeuj

of the district court of the United States for the southern dis-
38 trict of New York, and said trial was continued from day to day upon the proofs adduced by the respective parties, and thereafter, on or about the 26th day of May, 1886, said court made a decree adjudging that the libellants recover one-half of the damages by them respectively sustained, by reason of the matters by them alleged in the libel and supplemental libel, and referring it to Samuel H. Lyman, Esq., a commissioner of this court, to ascertain and compute such damages.

That the said commissioner, pursuant to said interlocutory decree and order of reference, proceeded with said reference, and upon the testimony taken therein made his report awarding the libellants various sums, amounting in the aggregate to the sum of $18,751.01, with interest, being one-half of the total damages determined by him to have been sustained by them, as alleged in the libel and supplemental libel; to which report exceptions were thereafter duly filed by claimant; that after argument said exceptions were overruled, as by reference to said report and exceptions and the decision of the said district court thereon will more fully appear.

That thereupon a final decree was made and entered on the 18th day of February, 1887, ordering and decreeing that the libellants recover against the steamship "Alaska," her engines, &c., various sums therein specified and amounting in the aggregate to the sum of $7,701.87.

And this appellant insists that the said interlocutory decree, the said report of said commissioner, the said disallowance of claimants' exceptions to said report, and the said final decree are erroneous, inasmuch as the libellants were not entitled to any damages, and, if entitled to any, the damages allowed are excessive, and the libel should have been dismissed with costs to the claimant.

And this appellant, for these and other reasons, appeals
39 from the whole of said decree to the circuit court of the United States for the southern district of New York, and on said appeal he intends to have said cause heard anew on the pleadings and proofs in the district court and other and new pleadings and proofs to be introduced in the circuit court, and prays that the proceedings, pleadings, and proofs be returned to said circuit court, and that the said court will make a decree reversing the said decree of the district court and dismissing the libel with costs.

Dated New York, March 7th, 1887.

WILCOX, ADAMS & MACKLIN,
Proctors for Claimant and Appellant.

To Messrs. Whitehead, Parker & Dexter, proctors for libellants; Samuel H. Lyman, Esq., clerk.

40 Circuit Court of the United States for the Southern District of New York. For Admiralty.

AUGUSTUS VAN PELT and MARY WOLF, as Owners of the Pilot-Boat "Columbia;" Catherine A. Metcalfe, Administratrix, &c., &c.; Francis Vogel and Adolph Wolf, Executors, &c., &c.; Mary E. Noble, Administratrix, &c., &c.; Agnes Arnold, Administratrix, &c., &c.; Bella Forblade, Administratrix, &c., &c.; Catherine A. Metcalfe, Widow of Thomas H. Metcalfe; Mary E. Noble, Widow of Ralph Noble, for Herself and Infant Daughter, Bella Noble; Mary Wolf, Widow of Christian Wolf, for Herself and Her Infant Children, Lena, Christian, William, Louisa, and Georgiana Wolf; Agnes Arnold, Widow of Charles Arnold, for Herself and Her Infant Child, Henry Arnold; and Bella Forblade, Widow of Harry Forblade, for Herself and Her Infant Children, John Henry, Daniel, Caroline, and Harry Forblade, Libellants and Appellants,

against

THE BRITISH STEAMSHIP "ALASKA," &c., &c.; WILLIAM PEARCE, Claimant and Appellee.

On appeal from the decree of the district court of the United States in and for the said southern district of New York.

41 To the honorable the judges of the circuit court of the United States for the southern district of New York, in the second circuit:

The appeal of the above-named libellants and appellants respectfully showeth:

(1.) That on the thirteenth day of November, in the year one thousand eight hundred and eighty-four, Augustus Van Pelt and Mary Wolf, as owners of the schooner (or pilot-boat) Columbia; Francis Vogel and Adolph Wolf, as executors of the last will of Christian Wolf, deceased; Catherine A. Metcalfe, as administratrix of the estate of Thomas H. Metcalfe, deceased; Mary E. Noble, as administratrix of the estate of Ralph Noble, deceased; Agnes Arnold, as administratrix of the estate of Charles Arnold, deceased; and Bella Forblade, as administratrix of the estate of Harry Forblade, deceased, exhibited their libel in the district court of the United States for the southern district of New York against the said British steamship "Alaska," her engines, boilers, tackle, apparel, and furniture, praying, amongst other things, for the reasons set forth in said libel, that the said court would pronounce for the claims in the said libel set forth, and would condemn the said steamship and all persons intervening for their interests therein to pay the demands of said libellants, with costs.

(2.) That on the 20th day of November, 1884, the said William Pearce appeared in said suit and entered and filed his claim to the said steamship; also a stipulation for the costs of said suit; also a stipulation for value in the sum of twenty thousand dollars, pursuant to the course and practice of said district court.

(3.) That on the 22d day of November, 1884 (by leave of said court, granted upon consent of said claimant), the libellants, Catherine A. Metcalfe, as widow of Thomas H. Metcalfe, dec'd;
42 Mary E. Noble, as widow of Ralph Noble, dec'd, for herself—her infant daughter, Belle Noble (also the daughter of said Ralph Noble); Mary Wolf, as widow of Christian Wolf, dec'd, for herself and infant children, Lena, Christian, William, Louisa, and Georgiana (also children of said Christian Wolf); Agnes Arnold, as widow of Charles Arnold, dec'd, for herself and her infant child, Harry (also the child of said Charles Arnold); and Bella Forblade, as widow of Harry Forblade, dec'd, for herself and her infant children, John Henry, Daniel, Caroline, and Harry (also children of said Harry Forblade), exhibited in said district court their supplemental libel against the said steamship "Alaska," &c., &c., praying, amongst other things, for the reasons set forth in said libel and supplemental libel that said district court would condemn the said steamship and all persons intervening for their interests therein to pay their said claims, with costs.

(4.) That said claimant, on the 25th day of November, 1884, thereupon filed his additional stipulation for value (under said supplemental libel) in the additional sum of twenty-five thousand dollars.

(5.) That on the 17th day of February, 1885, the said claimant filed in said district court his answers and exceptions to said libel and supplemental libel, praying that said libel and supplemental libel be dismissed and said libellants be condemned in costs.

(6.) That the said cause came on to be heard before the Honorable Addison Brown, judge of said district court, on the 19th day of October and the 12th and 16th days of November, 1885, upon testimony and proof then adduced by the respective parties, and was argued by their respective advocates; and the said judge, having advised thereon, afterwards, viz., on the 17th day of May, 1886, made a decree and sentence in the said cause, whereby it was sentenced and
43 decreed that the said schooner or pilot-boat "Columbia" and said steamship "Alaska" were both in fault, contributing to the collision in said libel complained of, and that the said several libellants do recover against the steamship "Alaska," her engines, &c., &c., only the one-half of the damages by them severally sustained by reason of said collision.

(7.) That on the 27th day of May, 1886, the said several libellants in said supplemental libel named, by leave of the court, amended their several prayers of said supplemental libel for damages so as to make their several damages prayed for the sum of ten thousand dollars each instead of five thousand dollars, as thereinbefore prayed for.

(8.) That on said 27th day of May, 1886, an interlocutory decree in accordance with the said sentence and finding was entered in said district court, and an order of reference was also entered that Samuel H. Lyman, Esq., one of the commissioners of said court, do ascertain the amounts of such half damages due to said several libellants and report the same to said district court.

(9.) That the report of said commissioner was filed on the 23d

day of November, 1886 (reference thereto being had), and that on the 27th day of November, 1886, said libellants and claimant all filed exceptions to said commissioner's report as to the several amounts of damages so found, and said claimant furthermore moved for a rehearing by said court as to the claims of said libellants in said supplemental libel exhibited and stated, which motion for rehearing was granted by said court.

(10.) That on the 18th day of February, after argument from the respective advocates of the parties, said exceptions were all overruled and the report of said commissioner confirmed in all respects by said district court, except claimant's exceptions to the
44 claims of libellants, as set forth in said supplemental libel, for damages for the loss of support of their said husbands and fathers, who were drowned by said collision, which exceptions were sustained.

(11.) That on the said 18th day of February, 1887, a final decree in said cause was made and entered by said district court, by which it was adjudged that the said libellants in said libel named do recover of the said steamship "Alaska," &c., &c., as the one-half of their damages in said libel demanded, as follows, the following sums, respectively, viz.:

Augustus Van Pelt, the sum of five thousand and nine hundred and fifty-eight dollars	$5,958 00
Mary Wolf, the sum of eleven hundred and ninety-two dollars	1,192 00
Francis Vogel and Adolph Wolf, executors of the last will of Christian Wolf, deceased, the sum of one hundred and seventy-four dollars	174 00
Catherine A. Metcalfe, administratrix of the estate of Thomas H. Metcalfe, dec'd, the sum of eighty dollars	80 00
Mary E. Noble, administratrix of the estate of Ralph Noble, deceased, the sum of one hundred and seventy-eight $\frac{75}{100}$ dollars	178 75
Agnes Arnold, administratrix of the estate of Charles Arnold, deceased, the sum of one hundred and sixty-five dollars	165 00
Bella Forblade, administratrix of the estate of Harry Forblade, deceased, the sum of fifty-three dollars	53 00

together with one-half of their costs, respectively, and that the claimant recover one-half his costs against the said libellants.

45 That by said final decree it was further adjudged that said supplemental libel be dismissed without costs as against the libellants therein named.

That by said final decree said steamship "Alaska," her engines, &c., &c., was condemned to pay the said damages and costs of the libellants in said lebel mentioned; and the stipulators for value and costs were ordered to perform their several stipulations as provided by the rules and practice of said district court.

(12.) And these libellants all are advised and insist that the find-

ing and decree of said district court that said pilot-boat "Columbia" was in fault, contributing to said collision, is erroneous.

And these libellants and appellants, Augustus Van Pelt and Mary Wolf, are advised and insist that the said final decree is erroneous, in this:

First. That they are entitled to full damages instead of only half damages, as by said decree adjudged.

Second. And that the value of said pilot-boat should have been found to be the sum of fifteen thousand dollars and not twelve thousand dollars, as found by said commissioner and confirmed by said court.

And these libellants and appellants, Francis Vogel and Adolph Wolf, executors as aforesaid; Catharine A. Metcalfe, administratrix as aforesaid; Mary E. Noble, administratrix as aforesaid; Agnes Arnold, administratrix as aforesaid, and Bella Forblade, administratrix as aforesaid, are severally advised and insist that the said final decree is erroneous, in that they are entitled to full damages instead of one-half damages, as adjudged thereby.

(13.) And the libellants in said supplemental libel named, viz., Catharine A. Metcalfe, widow, &c., &c.; Mary E. Noble, widow, &c., &c.; Mary Wolf, widow, &c., &c.; Agnes Arnold, widow, &c., &c., and Bella Forblade, widow, &c., &c., for themselves and their respective infant children in said final decree named, are advised and insist that said report of said commissioner is erroneous in respect to the amounts of damages severally reported as their due; and are further advised and insist that the said final decree dismissing their said supplemental libel is erroneous, because they are entitled to full damages according to the prayer of their said supplemental libel as amended.

46

(14.) And these libellants and appellants, all, for these and other reasons, appeal from the said decree of said district court to the next circuit court to be held in said southern district of New York, and upon said appeal the said libellants and appellants intend to make new allegations in the circuit court and intend to have the said cause heard anew in the circuit court on the pleadings and proofs in the district court, as well as upon the aforesaid new allegations to be made and other proof to be introduced in said circuit court.

And they all pray that said decree may be reversed in so far as it holds the said pilot-boat "Columbia" was in fault, contributing to said collision, and awards to them only half their damages and costs, and that whole damages and costs may be awarded them; and libellants, Augustus Van Pelt and Mary Wolf, as owners, etc., pray that the value of said pilot-boat "Columbia" may be adjudged to be the sum of fifteen thousand dollars instead of only twelve thousand dollars; and libellants in said supplemental libel named all pray that the said decree dismissing said supplemental libel may be wholly reversed, and that the libellants therein named may have a decree in said circuit court for the full amount of their damages in said supplemental libel demanded, or that such other decree may be made as the said circuit court may deem just; and that the said

libellants and appellants may have a decree against said
47 vessel and said claimant for the full amount of their costs in the district court, and in said circuit court the costs of this appeal.

Dated New York, March 11th, 1887.

WHITEHEAD, PARKER & DEXTER,
Proctors for Libellants.

JAMES PARKER, *Advocate.*

Service of a copy of the foregoing petition of appeal is acknowledged as of this date.

New York, March 11th, 1887.

WILCOX, ADAMS & MACKLIN,
Proctors for Claimant and Appellant.

48 United States Circuit Court, Southern District of New York.

VAN PELT *et al. vs.* THE STEAMSHIP "ALASKA."

WALLACE, *J.:*

This libel was filed to recover damages for the loss of the pilot-boat "Columbia" and the personal effects of her crew in consequence of a collision of the steamer "Alaska" on the night of December 2, 1883, by which the pilot-boat was sunk and all the men on board were drowned. A supplemental libel was filed to recover damages for the death of the persons lost, on behalf of their respective widows.

The district court condemned the steamer for one-half the damages for the loss of the pilot-boat, her furniture, etc., and the effects of the crew, and dismissed the supplemental libel filed by the widows of the deceased seamen. Both parties have appealed to this court. Further proofs have been taken by both parties upon this appeal, but the new testimony is principally that of expert witnesses upon matters of usage and opinion, and does not contribute much
49 new light upon the merits of the controversy.

The following facts are found upon the evidence:

The night was dark, but not thick; good for seeing lights, but not for calculating distances. The wind was blowing a gale from the northwest, and the sea was rough. When about twelve miles southeast from Fire Island light the "Alaska," then heading about west by north, observed the flash light of the pilot-boat bearing about southwest. At that time there were three officers, including the master, upon the bridge of the steamer and two look-outs, the latter being stationed there because of the heavy sea, which broke on the starboard bow of the steamship. The steamer answered the flash light of the pilot-boat by burning a blue light and starboarded her helm to approach the pilot-boat, going at a speed of about 14 knots an hour on a course west by south one-half south for 12 minutes. At 11.52 her engine was slowed, and she proceeded at half speed—at the rate of about 8 knots an hour. The pilot-boat shaped her course to the northward and eastward, gradually hauling to the westward to intercept the steamer. After the steamer starboarded

her helm the pilot-boat bore two points off her port bow, and the master ordered the men at the wheel to keep the pilot-boat at that bearing; and, as the pilot-boat bore to the westward, the steamer's course was accordingly gradually changed somewhat to the northward, and at 11.57 her speed was slackened from half speed to slow. The steamer proceeded at slow speed, going at the
50 rate of about 4 knots an hour for 9 minutes, when, at 12.06, her engines were stopped, and she was then heading to the west one-half south and the pilot-boat's light bore about southwest by west one-half west. At this time the master of the steamer supposed the vessels had approached sufficiently near to enable the pilot-boat to run down and manœuvre to despatch her yawl, and in order to hold the steamer against the wind he kept her somewhat under a port helm. In the meantime the gangway had been manned and a light hung at that place, on the port side of the steamer, to indicate where the pilot would be received. When the steamer's engines had been stopped two minutes the mast-head light of the pilot-boat was observed to close in rapidly on the steamer as though the pilot-boat had hauled to windward to cross the steamer's bow and had come up into the wind. Those in charge of the steamer deemed a collision imminent, and the steamer's engines were put full speed astern immediately. The vessels came into collision. The pilot-boat drifted along the starboard quarter of the steamer and went down forward of the bridge. The capsized yawl of the pilot-boat, with two or three men clinging to it crying for help, passed along the port side of the steamer and went down. The engines were kept at full speed astern for three minutes and were then stopped. Every exertion was made by the steamer to rescue the crew of the pilot-boat, but without avail, and all the members perished.

51 The speed of the pilot-boat while approaching the steamer was 7 or 8 knots, and she was about 4 knots from the place of collision at the time the steamer starboarded her helm to approach her. At the time the steamer stopped her engines the pilot-boat and the steamer were less than half a mile apart, and were less than a quarter of a mile distant from the place of collision. It was the purpose of those in charge of the pilot-boat to approach across the bows of the steamer, and when ahead to luff and launch her yawl in order to let the yawl pass along the port side of the steamer in the lee, while she herself would pass around to the windward by the steamer's stern and pick up the yawl after the pilot had been put on board. This manœuvre could have been safely accomplished if she had been able to launch her yawl at a sufficient distance ahead of the steamer; but such an attempt was hazardous, unless the steamer was practically at a dead stop, and also unless the pilot-boat had sufficient room ahead of the steamer to luff in the wind to launch the yawl when fully five hundred feet away, and if she had any less room under the circumstances of the night in question, or if the steamer was under headway, the attempt involved grave risk and was unjustifiable. The pilot-boat either mistook the distance away of the steamer or supposed the steamer's headway to be practically stopped, and, crossing the steamer's bow, luffed when

within five hundred feet, and probably considerably
52 less than that distance, of the steamer. There were but four seamen on the pilot-boat, and a cook, and usually five men are detailed from the crew of a pilot-boat to assist in launching a yawl, although sometimes three and even two men are sufficient. Some misadventure attended the attempt to launch the yawl, and in the consequent confusion and excitement the control of the pilot-boat was lost, and before it could be regained she drifted rapidly before the force of the wind towards and against the steamer's stem. The vessels came together in about three minutes after the steamer had stopped her engines—that is, about a minute after the order to reverse at full speed had been given—and when the vessels came together the steamer's headway had not been materially lessened below a speed of two knots an hour.

At the time of the collision Mr. S. B. Guion was the owner of the steamer, and he continued to be such owner until the 11th day of October, 1884, when he transferred her to the present claimant. The libel was not filed until more than 11 months after the day of the collision, and the steamer in the meantime had made ten trips between the ports of New York and Liverpool. The present claimant held a mortgage on the steamer for £95,311, which had originally been £108,811. At the time of the transfer from Guion the claimant took the steamer at the price of £120,000, paying to Guion in money the difference between that amount and the amount of the mortgage. He had no notice or information of the collision
53 between the steamer and the pilot-boat until after he had acquired his title.

The report of the commissioner in the district court as to the damages sustained by the libellants is adopted as a correct statement of the amount.

These conclusions of fact have been reached after an anxious consideration of the testimony. If they are erroneous they are the result of a painstaking effort to reconcile the testimony of the witnesses to the reasonable probabilities of the case; and, as they must be accepted as final for the purposes of an appeal, no useful purpose will be served by an extended review of the evidence or by giving the process of reasoning which has led to them.

Aside from the testimony to show what measures and manœuvres are customarily adopted and what is safe and proper navigation on the part of each vessel under circumstances like those preceding the collision, the evidence of the libellants consists of the testimony of two witnesses, passengers on the steamer, who saw the closing scenes of the tragedy, and such corroborative testimony as was elicited from the witnesses for the claimant upon cross-examination, who were principally the officers and seamen of the steamer. These two witnesses knew that a pilot was about to be taken on board, and that the steamer's headway had been slowed down for that purpose,
54 but they paid no attention to the details of the matter. They were called for the purpose of showing the steamer's apparent rate of speed after the first jar of the collision between the vessels had been noticed by them. They both went immediately to the

port side of the steamer and saw the yawl, with the men clinging to it, pass along the port side towards the stern until it disappeared from their vision. Both of them make the steamer's rate of speed, as estimated in part from the apparent rapidity with which the yawl passed astern, about 7 knots an hour. They are both intelligent and candid witnesses and, for landsmen, seem exceptionally qualified to give a reliable estimate; but with the wind and the rough sea, even on the lee side of the steamer, their very short opportunity for observation, the excitement of the moment, the difficulty to the inexperienced of making a correct estimate of a vessel's speed under ordinary circumstances, the liability to error is very great; and an allowance must be made also for the tendency of the wind to carry the yawl astern and away. Any such rate of speed would have been utterly inconsistent with the object which those in command of the steamer were anxious to accomplish without a mischance which might entail considerable delay, to say nothing of accomplishing it without endangering life. Such a rate of speed presupposes a much higher rate of speed when the steamer's engines were at half speed and at slow than can be accepted as true upon any fair view of the testimony.

55 Mr. Roberts, the third officer, thinks that the steamer while running with her engines stopped was under a headway of 2½ to 3 knots an hour. With this exception the testimony of all the officers and men upon the steamer is to the effect that she was under a headway not much, if any, exceeding half a knot. Without adverting to the collateral facts elicited from these witnesses tending to impugn the estimate of half a knot an hour, it is significant that it was necessary to keep the steamer at full speed astern three minutes in order to overcome her headway, and this circumstance, together with the instant apprehension of collision entertained by her officers when they saw the pilot-boat shape her course across the steamer's bows, are very inconsistent with the probability that the steamer was practically under no headway at the time.

Those in charge of the steamer supposed the pilot-boat would approach on the port side of the steamer and there launch the yawl, so as to get the benefit of the steamer's lee. It is not strange that they indulged this supposition, in view of the character of the night, the rough sea, and the force of the gale. The origin of the collision is undoubtedly to be traced to their misapprehension of the contemplated manœuvre of the pilot-boat. They assumed that when the vessels should approach sufficiently close to each other the pilot-boat would manœuvre so as to launch her yawl in the lee of

56 the steamer and did not anticipate, as they should have done, that she might prefer to launch her yawl in front of the steamer; and, acting upon this arbitrary assumption and disregarding the consideration that the pilot-boat had the option to manœuvre as those in charge of her might think best, the steamer was permitted to draw too near the pilot-boat before her engines were stopped; consequently her headway was not sufficiently checked to allow the pilot-boat to make her intended manœuvre except at an an unnecessary hazard. Several experts of large experience, masters

of ocean steamships, approve the conduct of those in charge of the steamer and state that Captain Murray's judgment that the pilot-boat would not attempt to launch her yawl in front of the steamer's bows on such a night was a judicious one. Nevertheless it cannot be doubted, upon the expert testimony, that the pilot-boat adopted a customary manœuvre, although, under the circumstances, it was one attended by more than ordinary risk. Those in charge of the steamer committed the error of substituting their own judgment of what the pilot-boat would probably do in place of the duty of so governing the movements of the steamer as to permit the pilot-boat to select and execute her own manœuvres. The error is extenuated by many considerations, but it was nevertheless a fault, as distinguished from a mere mistake in judgment.

57 After signals have been exchanged between a steamer and a pilot-boat, which signify an invitation of the pilot to come on board the steamer, the obvious duty of the steamer is to assist the pilot-boat in placing the pilot on board. If the steamer is a considerable distance off it is to be assumed that she will alter her course, bear down towards the pilot-boat, and slow her speed; and when she gets within a reasonable distance to permit the pilot-boat to undertake the immediate manœuvres necessary to approach the steamer, to leave the execution of these measures and the subsequent details of transferring the pilot to the judgment of the pilot-boat; and this involves stopping her own headway. It has been held in this circuit that the steamship has the right to come close to the pilot-boat and to believe that the pilot-boat will draw near to her, and to assume that one of that active class of vessels will co-operate with her in the effort to bring the vessels close to each other in safety. The Wisconsin, 23 Fed. Rep., 831; affirmed upon appeal, 25 Fed. Rep., 283. Proper co-operation between the vessels necessarily implies a duty on the part of the steamer to make the necessary manœuvres to afford a lee for the yawl in reaching the place where the pilot is to be received, and to stop her headway in due season and to the extent necessary to permit the pilot-boat to select a suitable place for launching her yawl and for the yawl to come alongside and transfer the pilot without

58 unnecessary risk. No peremptory or precise rule exists which defines how the duty of mutual co-operation is to be fulfilled. The conduct of both vessels is to be governed by the exercise of such care and good judgment with reference to the particular circumstances as would be exercised by prudent and skillful navigators under like conditions. Whether such care and good judgment have been exercised under the circumstances of a particular case is a question which may depend upon an usage of navigation and may be ascertained by the opinion of experts. In The City of Washington, 92 U. S., 32, evidence of this character was resorted to, and it was shown by expert testimony what manœuvres were adopted by steamships and what by pilot-boats when approaching and transferring a pilot, and this was held to be competent and the usage proved was adjudged to constitute the rule of navigation in that case. It was said in the opinion of the court that a general

usage may be proved in respect to any disputed question of navigation not controlled by the sailing rules prescribed by Congress. Such an usage is cogent evidence of what is expedient and prudent in a given case, and therefore is important in ascertaining what should or should not have been done under the circumstances. Moreover, each vessel has the right to assume that the other will conform to the requirements of an established usage and
59 must govern her own conduct accordingly; but the existence of such an usage is a question of fact, and an usage shown by the testimony in one case may be disproved in another, and experience shows that upon questions of nautical usage expert testimony can be produced of all shades and contrariety of opinion.

As has been stated, the testimony in the present case shows that the manœuvre adopted by the pilot-boat was a customary one, although it was one hardly to be expected under the circumstances of the occasion. The steamer cannot be exonerated. She neglected to do what her duty required—that is, to stop in due season and permit the pilot-boat to select her own method and course in approaching to launch her yawl and send it to the steamer after the vessels were sufficiently near to enable the pilot-boat to undertake the active responsibility of the enterprise.

Having found that the pilot-boat undertook the manœuvre which ended so disastrously without knowing that the headway of the steamer was stopped, and when she did not have sufficient room in front of the steamer to execute it prudently, it follows that she was also guilty of fault. The disaster cannot be attributed solely to the fault of one of the vessels. The case is not one where the negligence of either was remote or immaterial.

The claimants cannot reasonably invoke the doctrine of laches to defeat the suit. As was held in "The Key City" (14 Wall.,
60 660), no arbitrary or fixed period of time in delaying the assertion of a maritime lien has been or will be established as an inflexible rule, but the delay which will defeat such a suit must in every case depend on the peculiar equitable circumstances of that case. Admiralty denies the privilege of enforcing a lien which has been suffered to lie dormant, without excuse, until the rights of innocent third persons would be prejudiced if it should be recognized. Here the circumstance that those who it may be assumed would have been the most important witnesses for the libelants perished in the collision is a sufficient excuse for the delay of 11 months which intervened between the time of the collision and the filing of the libel. Indeed when the suit was brought and until the time of the trial in the district court the cause of the libelants seemed almost hopeless. The testimony of the two passengers was the fragile prop of their case. Ordinary prudence justified their hesitation during the period which elapsed before incurring the expense and burden of asserting a claim so precariously fortified.

Since the decision in the Harrisburg, 119 U. S., 199, it must be accepted as settled that a suit in admiralty cannot be maintained in the courts of the United States to recover damages for the death of a human being on high seas by negligence under the general

maritime law. The supplemental libel was therefore properly dismissed by the district court.

61 There will be accordingly a decree for the libelants, dividing the loss and the costs of the district court and this court.

(Endorsed:) United States circuit court, southern dist. of N. Y. Van Pelt *et al. vs.* The Steamship "Alaska." Opinion. Wallace, J. U. S. circuit court. Filed Dec. 8, 1887. Timothy Griffith, clerk.

62 [Endorsed:] U. S. circuit court. Van Pelt *vs.* The Alaska. Copy. Opinion. Wallace, J. Whitehead, Parker & Dexter, counsellors-at-law, 71 Wall St., New York.

63 U. S. Circuit Court, Southern District of New York.

AUGUSTUS VAN PELT *et al.*, Libellants and Appellants,
against
THE STEAMSHIP "ALASKA," Her Engines, &c.; WILLIAM PEARCE, Claimant and Appellant.

It is agreed that upon an adjustment of costs, and a decree being entered in conformity with the opinion of the circuit judge—

(I.) That the claimant will pay the amounts decreed against the steamer therein, and that the libellants will accept the same.

(II.) That no appeal shall be taken by either party, except that the libellants in supplemental libel reserve the right of appeal on the question of recovery of damages for loss of life.

(III.) That both vessels were in fault.

(IV.) That the "Alaska" was a British registered vessel and sailing under that flag.

(V.) That any statutes and reports of decisions of the courts of Great Britain may be referred to on the appeal herein contemplated as though they had been regularly introduced in evidence in this court.

(VI.) That neither the supplemental libellants nor the
64 claimant shall by this agreement be deemed to have waived any rights either would have had if it had not been made, excepting as provided for herein, the object being to avoid all questions excepting those of law arising out of the record, of which this agreement shall become a part.

Dated New York, March 3d, 1888.

WHITEHEAD, PARKER & DEXTER,
Proctors for Libellants and Supplemental Libellants.
WILCOX, ADAMS & MACHLIN,
Proctors for Claimant.

(Endorsed:) U. S. circuit court, southern district of New York. Augustus Van Pelt *et. al.*, libellants and appellants, against The Steamship "Alaska," her engines, &c.; William Pearce, claimant and appellant. Agreement. Wilcox, Adams & Macklin, proctors for libellants, No. 69 Wall street, New York. U. S. circuit court. Filed Mar. 6, 1888. Timothy Griffith, clerk.

65 At a stated term of the circuit court of the United States for the southern district of New York, in the second circuit, held at the court-rooms, in the city of New York, on the 16th day of March, A. D. eighteen hundred and eighty-eight.

Present: Hon. William J. Wallace, circuit judge.

AUGUSTUS VAN PELT and MARY WOLF, as Owners of the Schooner "Columbia;" Francis Vogel and Adolph Wolf, Executors of the Last Will, &c., of Christian Wolf, Dec'd; Mary E. Noble, as Administratrix of the Goods, &c., of Ralph Noble, Dec'd; Catharine A. Metcalfe, as Administratrix of the Goods, &c., of Thomas Metcalfe, Dec'd; Agnes Arnold, as Administratrix of the Goods, &c., of Charles Arnold, Dec'd, and Bella Forblade, as Administratrix of the Goods, &c., of Harry Forblade, Dec'd, Libellants and Appellants, and Mary Wolf, for Herself and Her Infant Chil-
66 dren, Lena, Christian, William, and Georgiana; Catharine A. Metcalfe; Mary E. Noble, for Herself and Infant Daughter, Bella; Agnes Arnold, for Herself and Infant Son, Harry; and Bella Forblade, for Herself and Infant Children, John Henry, Daniel, Caroline, and Harry, Supplemental Libellants and Appellants,

against

THE BRITISH STEAMSHIP "ALASKA," Her Engines, Boilers, Tackle, Apparel, and Furniture, and WILLIAM PEARCE, Claimant and Appell*ant*.

This cause having been heard on appeal from the decree of the district court in and for said southern district of New York upon the record of said district court and the additional pleadings and proofs of the respective parties adduced in this court, and having been argued by James Parker, Esq., advocate for the libellants and appellants, and by Geo. Bethune Adams, Esq., advocate for the claimant and appell*ant*, and the court having duly advised thereon, now, on motion of Whitehead, Parker, and Dexter, proctors for the libellants and appellants, it is ordered, adjudged, and decreed that both vessels were in fault for the collision complained of in the libel, and that the damages and costs of both the district court and this court be apportioned. It is further ordered, ad-
67 judged, and decreed that the said several libellants do recover against the said William Pearce, claimant of said steamship "Alaska," the one-half of their respective damages, which said one-half is as follows:

Augustus Van Pelt, as owner of five-sixths of said schooner "Columbia," the sum of five thousand eight hundred and thirty-nine and $\frac{68}{100}$ dollars	$5,839 68
Mary Wolf, as owner of one-sixth of said schooner "Columbia," the sum of eleven hundred and sixty-eight and $\frac{31}{100}$ dollars	1,168 31
Francis Vogel and Adolph Wolf, as executors of Christian Wolf, dec'd, the sum of one hundred and seventy-one & $\frac{69}{100}$ dollars	171 69

Catharine A. Metcalfe, as administratrix of Thomas H. Metcalfe, dec'd, the sum of seventy-eight & $\frac{94}{100}$ dollars	78 94
Mary E. Noble, as administratrix, &c., of Ralph Noble, dec'd, the sum of one hundred and seventy-six & $\frac{39}{100}$ dollars	176 39
Agnes Arnold, as administratrix of Charles Arnold, dec'd, the sum of one hundred and three & $\frac{60}{100}$ dollars	103 60
Bella Forblade, as administratrix, &c., of Harry Forblade, deceased, the sum of fifty-two & $\frac{30}{100}$ dollars	52 30
Total	$7,590 89

And that said libellants have execution for said several sums against said William Pearce, claimant.

68 It is further ordered, adjudged, and decreed that the sureties upon the stipulations given on behalf of said Steamship "Alaska," J. Kennedy Tod and H. C. Northcote, cause the engagement of their said stipulation to be performed or show cause, within four (4) days, or on the first day of jurisdiction thereafter, after the service of a copy of this decree upon the proctors for the claimant of said steamship "Alaska," why execution should not issue against them, their lands, goods, and chattels, to enforce payment of the several amounts herein decreed to be paid to said several libellants by the claimant of said steamship "Alaska;" and it is further ordered, adjudged, and decreed that the said supplemental libel of Mary Wolf, Mary E. Noble, Catharine A. Metcalfe, Agnes Arnold, and Bella Forblade, on behalf of themselves and their said respective children, for the loss of lives of their respective husbands be dismissed without costs of either the district court or this court to either party.

WM. J. WALLACE.

No objection to form of decree and amounts.

New York, March 8, '88.

WILCOX, ADAMS & MACKLIN,
Proctors for Claimant & Appellant.

(Endorsed:) Circuit court of the United States, southern district of New York, in second circuit. Augustus Van Pelt
69 *et als.*, libellants & appellants, against The British Steamship "Alaska," &c., &c.; William Pearce, claimant & appellant. Final decree. Whitehead, Parker & Dexter, proctors for libellants & appellants, 71 Wall street, New York. U. S. circuit court. Filed Mar. 16, 1888. Timothy Griffith, clerk.

70 *Satisfaction of Judgment.*

STATE OF NEW YORK, }
County of New York, } *ss:*

U. S. Circuit Court, Southern District of New York.

AUGUSTUS VAN PELT & Others, Libellants,
against
THE STEAMSHIP "ALASKA," Her Engines, &c.; WM. PEARCE, Claimant.

Satisfaction is acknowledged between Augustus Van Pelt *et al.*, libellants, and the steamship "Alaska," &c., William Pearce, claimant, for the sum of seven thousand five hundred and ninety & $\frac{89}{100}$ dollars (7,590.89). Judgment entered in the judgment book of the clerk of the circuit court of the U. S. for the southern district of New York the 16th day of March, one thousand eight hundred and eighty-eight.

WHITEHEAD, PARKER & DEXTER,
By JAMES PARKER.

STATE OF NEW YORK, }
County of New York, } *ss:*

On the 17th day of March, in the year one thousand eight hundred and eighty-eight, before me personally came James Parker, to me known and known to me to be a member of the firm of
71 Whitehead, Parker & Dexter, proctors for libellants in the above action, and also known to me to be the individual described in and who executed the foregoing instrument, and he acknowledged that he executed the same.

[SEAL.] HERBERT GREEN,
Notary Public, Kings County.

Certificate filed in New York county.

(Endorsed:) U. S. circuit court, so. dist. of N. Y. Augustus Van Pelt against The Steamship "Alaska," her engines, etc. Satisfaction of judgment. Wilcox, Adams & Macklin, proctors for cl'm't. U. S. circuit court. Filed Mar. 19, 1888. Timothy Griffith, clerk.

72 U. S. Circuit Court, Southern District of New York.

CATHARINE A. METCALFE, MARY E. NOBLE, MARY WOLF, AGNES ARNOLD, & BELLA FORBLADE, Libellants & Appellants,
vs.
THE STEAMSHIP "ALASKA," &c., &c.; WILLIAM PEARCE, Claimant & Appellee.

We hereby consent that the foregoing papers shall constitute the record to be sent by the clerk of the circuit court of the United

States for the southern district of New York to the U. S. Supreme Court on the appeal to said Supreme Court in the above-entitled cause, without prejudice to a motion to correct the said record.

New York, Sept. 25, 1888.

WILCOX, ADAMS & MACKLIN,
Proctors for Claimant.
WHITEHEAD, PARKER & DEXTER,
Proctors for Libellants & Appellants.

(Endorsed:) U. S. circuit court. Filed Oct. 2, 1888. John A. Shields, clerk.

73 Supreme Court of the United States of America. In Admiralty.

AUGUSTUS VAN PELT *et als.*, and CATHARINE A. METCALFE, Widow of Thomas H. Metcalfe, Dec'd; Mary E. Noble, Widow of Ralph Noble, Dec'd, for Herself and Infant Children; Mary Wolf, Widow of Christian Wolf, for Herself and Infant Children; Agnes Arnold, Widow of Charles Arnold, Dec'd, for Herself and Infant Son; and Bella Forblade, Widow of Harry Forblade, for Herself and Infant Children, Libellants & Appellants,

against

THE STEAMSHIP "ALASKA," Her Engines, &c., &c.; WILLIAM PEARCE, Claimant and Appellee.

The petition of appeal from the decree of the circuit court of the United States for the southern district of New York to the Supreme Court of the United States.

To the honorable the Supreme Court of the United States of America:

The appeal of Catharine A. Metcalf, Mary E. Noble, for herself and infant children; Mary Wolf, for herself and infant children; Agnes Arnold, for herself and infant child, and Bella Forblade, for herself and infant children, the above-named libellants and appellants, respectfully showeth—

74 That on the thirteenth day of November, in the year one thousand eight hundred and eighty-four, one Augustus Van Pelt *et als.* exhibited their libels in the district court of the United States for the southern district of New York as owners of the schooner or pilot-boat "Columbia," of New York, against the steamship "Alaska," &c., claiming damages, in a cause civil and maritime, for the loss of said vessel "Columbia" by reason of the collision in said libel complained of; and thereafter the claimant and appellee above named, William Pearce, appeared and claimed said vessel "Alaska" and filed a claim thereto; and—

That on the 22d day of November, 1884, by leave of court, granted upon consent of said claimant, the above-named libellants, Catharine A. Metcalfe, as widow of Thomas M. Metcalfe, dec'd; Mary E. Noble, as widow of Ralph Noble, dec'd, for herself and her infant daughter, Bella Noble (also the daughter of said Ralph Noble); Mary Wolf, widow of Christian Wolf, dec'd, for herself and infant children, Lena, Christian, William, Louisa, and Georgiana (also children of said Christian Wolf); Agnes Arnold, widow of Charles Arnold, dec'd,

for herself and infant son, Harry Arnold (also the son of said Charles Arnold), and Bella Forblade, widow of Harry Forblade, dec'd, for herself and infant children, John Henry, Daniel, Caroline, and Harry (also children of said Harry Forblade), exhibited their supplemental libel in said cause against said steamship "Alaska," praying, amongst other things, for damages for the loss of the lives and of the support of their said respective husbands and parents
75 and natural supporters by reason of the collision in said libel complained of; and thereupon the said claimant filed his stipulation for value under said supplemental libel.

That afterwards, on February 25th, 1885, claimant filed his answer to said libel and supplemental libel and exceptions thereto.

That such proceedings were afterwards had that on the 18th day of February, 1887, the said district court made a final decree in said cause, by which it was adjudged that said supplemental libel be dismissed without costs to either party.

That after said final decree your petitioners duly appealed therefrom to the circuit court of the United States for the southern district of New York, and the said cause was thereby removed into the said circuit court and there tried anew; and such proceedings were had in the said circuit court that afterwards, on the 16th day of March, 1888, the said circuit court made a final decree in said cause whereby it was decreed that the said decree of the district court be in all things affirmed; which said decree of said circuit court is, as these appellants are advised and believe, erroneous and ought to be reversed.

Wherefore these appellants appeal from the whole of said decree of the said circuit court to the Supreme Court of the United States, and respectfully pray that the decree of said circuit court and the libel, supplemental libel, answer, findings of the circuit judge, and such other proceedings of said circuit court as the rules of said
76 Supreme Court require in the said cause may be sent to the Supreme Court of the United States without delay, and that said Supreme Court will proceed to hear the said appeal, and that the said decree of said circuit court and every part thereof may be reversed and a decree made awarding to your appellants their damages as in said libel and supplementary libel claimed by them, or such other decree made as to the said Supreme Court of the United States shall seem just.

Dated New York, August 21, 1888.

CATHARINE A. METCALFE.
MARY E. NOBLE,
For Self and Infant Daughter.
MARY WOLF,
For Self and Infant Children.
AGNES ARNOLD,
For Self and Infant Son.
BELLA FORBLADE,
For Self and Infant Children.

WHITEHEAD, PARKER & DEXTER,
Proctors for Above-Named Libellants & Appellants.
JAMES PARKER, *Advocate.*

The foregoing appeal is hereby allowed.

Dated Sept. 10th, 1888.

E. HENRY LACOMBE,
Circuit Judge.

(Endorsed:) Supreme Court of the United States of Amer-
77 ica. Catharine A. Metcalfe *et als.*, libellants & appellants, *vs.* The Steamship "Alaska," &c.; Wm. Pearce, claimant and appellee. The petition of appeal from decree of the circuit court. Whitehead, Parker & Dexter, proctors for appellants, 71 Wall street, New York. Service of a copy of within is admitted as of date of Sept. 11, 1888. Wilcox, Adams & Macklin, proctors for cl't & appellee. U. S. circuit court. Filed Sep. 12, 1888. John A. Shields, clerk.

78 *Bond for Damages and Costs.*

Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

CATHARINE A. METCALFE, MARY E. NOBLE, MARY WOLF, AGNES ARNOLD, and BELLA FORBLADE, Libellants & Appellants,

vs.

THE S. S. "ALASKA," &c., &c.; WM. PEARCE, Claimant & Appellee.

Know all men by these presents that we, Catharine A. Metcalf, Mary E. Noble, Mary Wolf, Agnes Arnold, and Bella Forblade, libellants & appellants above named, and James Parker, are held and firmly bound unto the above-named William Pearce, claimant & appellee, in the sum of one hundred dollars, to be paid to the said William Pearce; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the thirty-first day of August, in the year of our Lord one thousand eight hundred and eighty-eight.

Whereas the above-named libellants have prosecuted an appeal to the Supreme Court of the United States from a final decree in admiralty dismissing their libel entered in above-entitled suit on the 16th day of March, A. D. 1888, to reverse the said final decree rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named libellants shall prosecute said appeal to effect and answer all damages and costs if said libellants shall fail to make their

said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

CATHARINE A. METCALFE,
By JAMES PARKER, *Att'y.* [L. S.]
MARY E. NOBLE,
By JAMES PARKER, *Att'y.* [L. S.]
MARY WOLF,
By JAMES PARKER, *Att'y.* [L. S.]
AGNES ARNOLD,
By JAMES PARKER, *Att'y.* [L. S.]
BELLA FORBLADE,
By JAMES PARKER, *Att'y.* [L. S.]
JAMES PARKER. [L. S.]

Sealed and delivered and taken and acknowledged this 4th day of September, 1888, before me—

HERBERT GREEN, [L. S.]
Notary Public, Kings & N. Y. Co.

79 [Endorsed:] U. S. circuit court, southern district of New York. Catharine A. Metcalf, Mary E. Noble, Mary Wolf, Agnes Arnold, & Bella Forblade, libellants & appellants, *vs.* The S. S. Alaska, &c., & Wm. Pearce, cl'nt & appellee. Bond for costs on appeal. The within bond approved as to amount found & sufficiency of surety. E. Henry Lacombe. Wilcox, Adams & Macklin, proctors for claimant & appellee. U. S. circuit court. Filed Sept. 10, 1888. John A. Shields, clerk.

UNITED STATES OF AMERICA, } *ss:*
Southern District of New York, }

James Parker, being duly sworn, doth depose and say that he is worth the sum of two hundred dollars over and above all his just debts and liabilities.

JAMES PARKER.

Sworn to this 4th day of Sept., A. D. 1888, before me—

HERBERT GREEN, [L. S.]
Notary Public, Kings & N. Y. Co.

80 UNITED STATES OF AMERICA, *ss:*

By the Honorable E. Henry Lacombe, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit.

To William Pearce, claimant of the steamship "Alaska," her engines, tackle, &c., &c.:

Whereas Catharine A. Metcalfe, Mary E. Noble, Mary Wolf, Agnes

Arnold, and Bella Forblade, for themselves and their respective infant children, libellants, have lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of New York, in the second circuit, dismissing their libel against said Steamship "Alaska," &c., and have filed the security required by law:

You are hereby cited to appear before said Supreme Court, at the city of Washington, on the second Monday of October, eighteen hundred and eighty-eight, pursuant to the petition of appeal filed in the clerk's office of the circuit court of the United States for the southern district of New York, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the southern district of New York, in the second circuit, on this tenth day of September, 1888.

E. HENRY LACOMBE,
Circuit Judge.

(Endorsed:) U. S. circuit court for the southern dist. of N.
81 Y., second circuit. Catharine A. Metcalfe, Mary E. Noble, Mary Wolf, Agnes Arnold, and Bella Forblade, libellants and appellants, against The Steamship "Alaska," &c.; William Pearce, claimant and appellee. The citation on appeal to U. S. Supreme Court. Whitehead, Parker & Dexter, proctors for appellants, 71 Wall street, New York. Service of a copy of within citation is admitted as of date of Sept. 11, 1888. Wilcox, Adams & Macklin, proctors for claimant and appellee. U. S. circuit court. Filed Sep. 12, 1888. John A. Shields, clerk.

82 UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

I, John A. Shields, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to eighty-one, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Augustus Van Pelt *et als.* and Catharine A. Metcalfe, widow of Thomas H. Metcalfe, dec'd; Mary E. Noble, widow of Ralph Noble, dec'd, for herself and infant children; Mary Wolf, widow of Christian Wolf, for herself and infant children; Agnes Arnold, widow of Charles Arnold, dec'd, for herself and infant son, and Bella Forblade, widow of Harry Forblade, for herself and infant children, libellants and appellants, against The Steamship "Alaska," her engines, &c., &c., William Pearce, claimant and appellee, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 4th day of October, in the year of our Lord one thousand eight hundred and eighty-eight, and of the

Independence of the said United States the one hundred and thirteenth.

[Seal of U. S. Circuit Court, South. Dist. New York.]

JOHN A. SHIELDS, *Clerk.*

Endorsed on cover: S. New York C. C. U. S. No. 1217. Catharine A. Metcalfe, Mary E. Noble, *et al.*, appellants, *vs.* The Steamship "Alaska," her engines, &c., Lady D. E. Pearce, Sir William George Pearce, James Robertson, & Richard Barnwell, executors of William Pearce, deceased, claimants. Filed October 8, 1888.

Supreme Court of the United States. October Term, 1888.

CATHERINE A. METCALFE, MARY E. NOBLE, AGNES Arnold, Mary E. Wolf, and Bella Forblade, Appellants,

against

THE STEAMSHIP "ALASKA," Her Engines, etc.; Lady D. E. Pearce, Sir William George Pearce, James Robertson, and Richard Barnwell, Executors of William Pearce, Deceased, Appellees.

No. 1217.

It is hereby consented that the record herein be amended by the addition of the following stipulation, viz:

First. That the supplemental libel as filed claimed five thousand dollars damages for loss of each life; that the same was constructively amended on the 27th day of May, 1886, as appears by recital in libellants' petition of appeal, on page 22, folio 43, of Record, and again on the 11th day of February, 1887, as appears in order of district court, on page 19, folio 36, of Record, but no new libel was filed nor actual change made in the original libel, and it now remains of record as filed; that amendments were intended to be made in the sum of ten thousand dollars in each case, and that the claim of five thousand dollars, loss of life of Thomas A. Metcalf, as it appears on page 6, folio 13, of Record, is a clerical mistake.

Second. That the stipulation for value, dated November 20th, 1884, in the sum of $20,000, recited in the 2nd paragraph of libellants' petition of appeal, on page 21, folio 41, of Record, was given to secure the release of the steamer from claims for loss of pilot-boat and personal effects of crew and has been cancelled of record.

Third. That the stipulation for value, dated November 25th, 1884, for the sum of $25,000, recited in the 4th paragraph of the libellants' petition of appeal, on page 22, folio 42, of Record, was given to secure the release of steamer from said claims for loss of life, and remains on record and uncancelled in the district court, and is the only stipulation ever given in the cases of supplemental libellants; that the following is a copy of the same:

"*Stipulation for Value. Filed the 25th day of Nov.*, 1884.

"District Court of the United States for the Southern District of New York. In Admiralty.

"Entered into pursuant to the rules and practice of this court.

"Whereas a supplemental libel was filed on the 22nd day of November, in the year of our Lord one thousand eight hundred and eighty-four, by Catherine E. Metcalfe, Mary E. Noble, Agnes Arnold, Mary Wolf, and Bella Forblade against the British steamship 'Alaska,' her engines, etc., for the reasons and causes in the said libel mentioned; and whereas the said steamship 'Alaska,' her engines, in the original action brought against said vessel by Augustus Van Pelt and others, was in the custody of the marshal under the process issued in pursuance of the prayer of the said libel; and whereas a claim to said vessel has been filed by William Pearce,

and the value thereof has been fixed by consent at twenty-five thousand dollars for the purposes of this action, as appears from said consent now on file in said court; and the parties hereto hereby consenting and agreeing that in case of default or contumacy on the part of claimant or his surety execution for the above amount may issue against their goods, chattels, and lands:

"Now, therefore, the condition of the stipulation is such that if the stipulators undersigned shall at any time, upon the interlocutory or final order or decree of the said district court or of any appellate court to which the above-named suit may proceed, and upon notice of such order or decree to Wilcox, Adams & Macklin, Esquires, proctors for the claimants, by said steamship 'Alaska,' her engines, etc., abide by and pay the money awarded by the final decree rendered by this court or appellate court, if any appeal intervene, then this stipulation to be void; otherwise to remain in full force and virtue.

"WILLIAM PEARCE,
"J. PRICE, *Ag't.*
"J. KENNEDY TOD.
"H. C. NORTHCOTE.

"Taken and acknowledged this 24th day of November, 1884, before me—

"CORNELIUS D. GOULD,
"*Notary Public, New York Co.*

"WILCOX, ADAMS & MACKLIN,
"*Proctors for Claimant.*

"SOUTHERN DISTRICT OF NEW YORK, *ss:*

"J. Kennedy Tod and H. O. Northcote, parties to the above stipulation, being duly sworn, depose and say, each for himself, that he is worth the sum of thirty thousand dollars over and above all his just debts and liabilities.

"J. KENNEDY TOD.
"H. O. NORTHCOTE.

"Sworn to this 24th day of November, 1884, before me—

"CORNELIUS D. GOULD,
"*Notary Public, New York Co.*

"Approved as to form and sufficiency of sureties.

"WHITEHEAD, PARKER & DEXTER,
"*Proctors for Libellants.*"

Dated New York, January 28th, 1889.

JAMES PARKER,
Counsel for Appellants.
GEO. BETHUNE ADAMS,
Counsel for Appellees.

Due service of a copy of the within stipulation is hereby admitted.

Dated New York, January 28, 1889.

JAMES PARKER,
Counsel for Appellants.

[Endorsed:] U. S. Supreme Court. 1888, Oct'r term. No. 1217. Catherine A. Metcalfe *et al.*, appellants, against The Steamship "Alaska," her engines, etc.; Lady D. E. Pearce *et al.* Stipulation & addition to record. Geo. Bethune Adams, counsel for appellees, No. 69 Wall street, New York.

[Stamped:] Office Supreme Court U. S. Filed Jan. 30, 1889. James H. McKenney, clerk.

Office Supreme Court, U. S.
FILED,
MAR 11 1889
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

No. 1217.

OCTOBER TERM, 1888.

CATHERINE A. METCALFE, *et al.*,

Appellants,

against

The Steamship "ALASKA," her engines, etc., LADY D. E. PEARCE, *et al.*,

Appellees.

BRIEF

On part of Appellants in opposition to Motion to dismiss Appeal, or affirm Judgment.

JAMES PARKER,

Counsel for Appellants.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

CATHERINE A. METCALFE *et al.*, Appellants,

against

The Steamship "ALASKA, her Engines, etc., Lady D. E. PEARCE *et al.*, Appellees.

No. 1217.

Brief

On part of Appellants in Opposition to Motion to dismiss Appeal or affirm Decree.

POINTS.

I.

The claim of damages made by each party libellant is for $10,000. The amount of the stipulation for value is $25,000. There are five libellants, widows, who sue on behalf of themselves and infant children.

II.

The cases cited by the counsel who presents the motion do not sustain his contention that the amount in controversy here is below the jurisdictional amount.

The first case cited by the learned counsel is squarely against the motion.

Oliver vs. *Alexander* (6 Peters, 143).

Had previously been before this Court (5 Peters, 675), and this Court had adjudged that certain seamen of the ship "Warren" had a lien upon the fund in controversy for their wages, aggregating $32,870\frac{33}{100}$. The fund itself was some $37,000, but no seaman's claim equalled the jurisdictional amount.

In the case as reported in 5 Peters, no objection to the jurisdiction of the Court was raised, on that ground by those eminent counsel, Messrs. Taney and Wirt, who were against the seamen.

This Court issued its mandate to the Circuit Court, requiring that Court to determine the amounts due each individual seaman. This was done, and a separate decree for each was entered, from which the parties contesting the seamen's claims appealed. This was the case in 6 Peters, and the seamen moved to dismiss on the ground that none of these decrees was for a sum equal to the jurisdictional amount; and the motion was properly granted.

In the case at bar, this Court, upon the hearing, may hold that the suits brought by these appellants will lie. In that event, its mandate will issue requiring the Circuit Court to determine the amount each appellant is entitled to, and, from such decrees as may not exceed $5,000—exclusive of costs—no appeal to this Court will lie.

All the other cases cited by the learned counsel are

cases in which appeals were dismissed because the amount in controversy was below the jurisdictional amount.

It is not to be wondered at that the learned counsel endeavors to avoid the force of

"*The Mamie*," 105 U. S., 773.

In that case, no individual claim exceeded $5,000, but the parties libellant were the administrators, instead of the widows, of the drowned persons. The motion to dismiss on the ground that no claim exceeded $5,000 was denied.

In "Ex parte *Balto. & O. R. R. Co.*," 106 U. S., 5, Mr. Chief Justice Waite, commenting upon "*The Mamie*," said: "The theory is, that the owner brings "into Court the fund which he says belongs to all who "have claims upon his vessel growing out of the loss, "and surrenders it to them collectively in satisfaction of "their demands. If he succeeds, all the claimants have "a common interest in the fund thus created, and are "entitled to have it divided between them in proportion "to the amount of their respective claims. With this "division, the owner of the vessel has nothing to do."

That language exactly fits this case. Here the stipulation for value represents the fund in Court; stands in place of the vessel.

It may, on the trial, appear that some of these libellants are entitled to more, and some to less, than $5,000, but they all claim $10,000.

This Court cannot tell what each is to receive, until the proof is made of their respective damages.

If they finally receive decrees for $10,000 each, it will be their misfortune if the $25,000 stipulated for does not cover them all, and they do not get their money in full.

See *Davies* vs. *Corbin*, *112 U. S., 36.*

There is no instance in the Reports of this Court wherein an appeal has been dismissed where every claim, and the fund itself out of which decrees must be satisfied both exceeded the jurisdictional amount.

III.

The contention "B" of the learned counsel, that the appeal should be dismissed because of the admission of the stipulation that "both vessels were in fault," cannot be maintained. That was only a statement of the finding of the Court below; and was not intended to cut off our right to appeal from the decree dismissing our supplemental libel, because, as the stipulation itself shows, the supplemental libellants "*reserve the right to "appeal on the question of damages for loss of life*" (See folio 63, p. 31).

The learned counsel answers his own objection by saying that the deceased persons were not identified with the vessel at fault.

Whether they were so or not, is of no consequence on this appeal.

The parties appellant here are not the same as those who were parties in the libel for loss of property; and are certainly not identified with the vessel. In that libel they sued as the administrators of the deceased. In the supplemental libel the widows sue in their own right, and on behalf of their children, for loss of the support of their husbands and fathers.

IV.

From the foregoing it follows that there is no color of right to have this appeal dismissed for want of jurisdiction because of the amount in controversy ; and, therefore, that the motion to dismiss must be denied.

V.

A motion to affirm the judgment below cannot be entertained under the rule, unless there is color of right to a dismissal.

This is the settled construction given to that rule by this Court in many cases.

Whitney *vs.* Cook, 99 U. S., 607.
Hinckley *vs* Morton, 103 U. S., 764.
Micas *vs.* Williams, 104 U. S., 556.
Independent Schl. Dist. *vs.* Hall, 106 U. S., 428.
Davies *vs.* U. S. *ex rel.* Corbin, 113 U. S., 687.

VI.

Should, however, this Court deem it proper under the rule, to entertain the motion to affirm, we present the following in opposition to such action.

Such motion under subdivision 5 of rule 6, can only be made upon two grounds.

1. That the appeal was taken for delay only.
2. That the same is so frivolous as not to need further argument.

VII.

This appeal cannot be said to be taken for delay only, because there is no decree against the appellants, the execution of which can be delayed by appeal. They are under no obligation to the appellees of any nature. There is nothing to delay about.

Their libels were dismissed without costs to either party, because the Circuit Court felt itself bound by the decision of this Court in "*The Harrisburg*," *119 U. S., 199*).

VIII.

The second ground demands more consideration. It is always with great embarrassment that a counsel stands before this Court to appeal to it to do anything that will tend to cast a doubt upon the correctness of its own decisions; but, on the other hand, I am sure that inasmuch as my duty to my clients,—the five widows and their eleven orphaned children, who, by this collision were, at one fell blow, deprived of their husbands, fathers and natural supporters,—requires me so to do, no pride of opinion will induce the Court to refuse to hear their plea in the ordinary course of its administration of justice.

This is not the time or place where the discussion of the correctness of the decision in "*The Harrisburg*" would be proper; and I will therefore merely call attention to some of the reasons why this Court should not, in the summary method demanded by this motion, apply that decision to cut off the appeal herein; and give some few instances wherein this Court has, from time to

time, reversed its views upon the question of Admiralty, and other, jurisdiction.

As is well known to the Court, ever since Admiralty law began to be administered by Courts, there has been a constant conflict between the Admiralty and Common Law Courts of Great Britain, as to the extent of Admiralty jurisdiction.

As Benedict, in his admirable work, says: "Matters "raged so high that a war was declared between the "two courts. Prohibitions were hurled from West-"minster Hall, and without much order;" and, so, it came to pass that "after centuries of strife, the jurisdic-"tion of the Admiralty Court had been confined to very "narrow limits."

But one of these, however, was "collisions and *injuries* to property or *persons*, on the high seas."

Benedict's Admiralty, § 74 and § 111.

But, as Benedict shows, in the Colonial Courts of Admiralty, the jurisdiction was greatly enlarged, those courts having re-assumed, from time to time, much of their ancient jurisdiction; still the limits and extent of that jurisdiction was by no means clearly marked.

The uncertainty which surrounded the question began to make itself felt in the United States immediately after the adoption of the Constitution, and the old struggle has continued, both in England and in this country, until now.

That just respect which every right feeling man should have for that great body of the *lex non scripta*, which, in spite of statutes, and of all obstacles, has, for so many centuries, defined the rights of life and property and the relations to each other, of the great Anglo-Saxon branch of the human family, continues to control the Courts whenever the question comes up. Even in this Court, from the time when those much discussed words

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That just respect which every right feeling man should have for that great body of the *lex non scripta*, which, in spite of statutes, and of all obstacles, has, for so many centuries, defined the rights of life and property and the relations to each other, of the great Anglo-Saxon branch of the human family, continues to control the Courts whenever the question comes up. Even in this Court, from the time when those much discussed words

"all cases of Admiralty and maritime jurisdiction," were placed in the Constitution, this conflict has gone on. Yet, in this Court, little by little, but not without vigorous, and almost passionate, protests from such eminent common law jurists as Justices Woodbury, Daniel, Grier, Campbell, and Wayne, the Admiralty has been gaining back much of the ancient authority of which it had been deprived.

Will the Court pardon me for tracing to some extent, this progress.

In the "*Thomas Jefferson*," 10 Wheat., 428, (1823) Chief Justice Marshal, as the mouthpiece of an unanimous Court, declared that:

"The Admiralty has no jurisdiction over contracts for "the hire of seamen, except in cases where the service "is substantially to be performed upon waters within "the ebb and flow of the tide."

This position, as a defining limit of Admiralty jurisdiction, was re-asserted by an unanimous Court, (four of the former Justices still sitting) in

"*The Planter*," 7 Pet., 324,. (1833).

It was again unanimously asserted in 1836, in

Hobart vs. *Drogan*, 10 Peters, 108.

In which case Mr. Justice Story affirmed "the princi- "ples established by this Court in the cases of the "'*Thomas Jefferson*' and '*Peyroux* vs. *Howard*' (The "'Planter).'"

Again unanimously (in 1837) in

The Steamboat "*Orleans*" vs. *Phœbus*, 11 Peters, 175,

wherein Mr. Justice Story said: "The true test of its "(Admiralty) jurisdiction is whether the vessel be en- "gaged substantially in maritime navigation, or in in-

"terior navigation and trade, *not* on tide-water. In the "latter case there is *no* jurisdiction."

Again in 1847, in

Waring vs. *Clarke*, 5 How., 441.

In the argument of this case Messrs. Ames, Whipple, Greene, Daniel Webster, Reverdy Johnson and Crittenden took part.

Mr. Justice Wayne reasserted the doctrine of the foregoing cases so far as to maintain that ebb and flow of the tide were necessary to Admiralty jurisdiction; but relaxed the old limitation laid down by the English Courts, so far as to declare that the jurisdiction extended to tide-waters, whether *infra corpus comitatus* or not.

This was a great victory for the Admiralty; but it was not achieved without most earnest dissent. Mr. Justice Woodbury, in an extended and elaborate opinion, battled for the old limitations, and Justices Daniel and Grier concurred with him.

Thus the law continued to be until 1851. For sixty-two years this narrow rule had been applied. In 1851, however, in the great case of

"*The Genessee Chief*," 12 How., 443.

This Court, Mr. Ch. J. Taney (Mr. Justice Daniel alone dissenting) delivering the opinion, solemnly overruled all the foregoing decisions, and held that Admiralty jurisdiction was *not* confined to waters within the ebb and flow of the tide, and that, too, upon the ground *that the former contrary decisions had not been well considered*, although the learned Chief Justice himself and his associates, McLean, Wayne and Catron; and such Justices as Marshall, Johnson, Story, Washington, Thompson, Baldwin, Duvall and Todd had united in making them.

In respect to the Admiralty jurisdiction to award damages growing out of loss of life, there had, prior to the decision of "*The Harrisburg*," been great progress.

A Chief Justice (Chase) and two of the Justices of this Court (Woods and Blatchford 6 Ben, 370), the Circuit Courts of four Circuits, the District Courtsof nine or ten Districts, had united in maintaining the jurisdiction on various grounds.

The Admiralty Courts of England (until overruled by the common law judges), with Sir Robert Phillimore at their head, the Law of Scotland, of Germany, the Civil law, all concurred in giving the remedy for the wrong.

This Court itself in

Ex parte Gordon, 104 U S., 515,

had used this language:

"It is no doubt true that, down to a comparatively "recent period the Courts of Admiralty, both in Eng- "land and in this country, have followed the rule of the "common law in respect to such actions, and have de- "cided that damages for such wrongs were not recover- "able; but since Lord Campbell's Act, it has been pro- "vided by statute in England, and in most of the States "of the Union, that suits may by brought in the Courts "of common law for the benefit of those having a "pecuniary interest in the life of one who has been "killed by the wrongful act of another, to recover such "damages as may have been sustained in consequence "of the wrong that has been done; and we think it "clearly within the power of the Courts of Admiralty "to determine whether this legislation has not wrought "a corresponding change in the laws which govern their "jurisdiction."

That was an application for a writ of prohibition to the District Court; and, in denying it, the Court said finally: "The Court of Admiralty is competent, we

" think, to determine whether, since the common law " Courts in England, and, to a large extent, in the " United States, are permitted to estimate the damages " which a particular person has sustained by the wrong- " ful killing of another, the Courts of Admiralty may " not do the same thing."

The motion for prohibition in that case would have been, if successful, an arbitrary way of disposing of the claim of the libellants, without giving them a hearing; just as this motion to dismiss or affirm, if successful, will be.

The decision of this Court in "*The Harrisburg*" turned back the whole swelling tide of admiralty decision upon this subject.

The learned counsel claims that this case and that of "*The Harrisburg*" are identical. Not so. *There* the parties were all citizens of the United States. The vessel was owned in Pennsylvania, and the wrongful killing occurred in waters of the State of Massachusetts. The libellants could have had their remedy at common law, either in Pennsylvania or in Massachusetts, had they sued in time, under the statutes of either State.

Here the libellants and those who were wrongfully killed are, and were, citizens of New York; the wrongdoing vessel is owned in Great Britain, and the wrongful killing occurred on the high seas, without the territorial jurisdiction of any State or country, and in a place to which the general law, the *jus gentium*, applies, and to which the *common law* does not, and never could or did apply.

In "*The Harrisburg*," the libels had not been brought within the time limited by the statutes of Massachusetts or Pennsylvania.

By the statutes of the State of New York (Code of Civil Procedure, § 1902), such a suit must be brought within two years after the death.

The deaths in this case occurred December 2d, 1883, and the libel was filed Nov. 11th, 1884, within the two years prescribed by the statutes of New York.

In "*The Harrisburg*," this Court did not decide that branch of the case (Opinion, p. 214). "This brings us to the second branch, &c., &c."

How far the fact that we began within the time limited by the Code of New York affects jurisdiction; whether the suit should have been brought by the administrators; whether an action *in rem* against the offending vessel will lie:

These questions will all arise in this case; and, in respect to them, this case is different from that of "*The Harrisburg*."

In this case, unless these libellants can appeal to an Admiralty Court, they are remediless. They could not have appealed to the Courts of the State of New York, because the deaths did not occur within that State, or in waters subject to its jurisdiction.

If this motion to dismiss or affirm is granted by this Court, it will, in effect, turn away the face of justice from these libellants. It will, in effect, say to them, that "the only earthly tribunal to which the widow and "orphan of those who go down to the sea in ships can "appeal for the righting of such a wrong as these "libellants have suffered," will turn a deaf ear; that while every State in this great Union, and every civilized country in the world, gives a remedy to those who thus suffer from the deaths of their natural supporters when such a death occurs on shore, the Court of Admiralty—a Court of Equity—alone will thunder back in reply to their appeals for justice, that old maxim of the common law, "*Actio personalis moritur cum persona*," built, as it was, upon a feudal fiction, and long ago rejected, as to actions of this sort, by the better and more merciful sentiment of the country whose Courts of jus-

tice first gave it utterance, and by every Court in every land, except the Admiralty Courts of this, the greatest of all lands, as it should be the tenderest of all towards those who carry its flag upon the ocean.

To the case of "*The Harrisburg*" I would hope that this Court will in time apply the language of Ch. J. Taney in "*The Genessee Chief*" (*supra*), relative to the "*Thomas Jefferson.*" "It did not decide any question "of property, or lay down any rule by which the right "of property should be determined. If it had, we "should have felt bound to follow it, notwithstanding "the opinion we have expressed. For every one would "suppose that after a decision of this Court in a matter of "that kind, he might safely enter into contracts upon "the faith that rights thus acquired would not be dis-"turbed. In such a case *Stare decisis*, is the safe and "established rule of judicial policy, and should always "be adhered to.

"But the decision referred to has no relation to rights "of property. It was a question of jurisdiction only, "and the judgment we now give can disturb no rights "of property, nor interfere with any contracts hereto-"fore made. And as we are convinced that the former "decision was founded on error, and that the error, if "not corrected, must produce serious public as well "as private inconvenience and loss, it becomes our duty "not to perpetuate it."

And that other language used by Mr. Justice McLean, in

The Magnolia, 20 How., 335, (at p. 307).

"Antiquity has its charms, as it is rarely found in "the common walks of professional life; but it may be "doubted whether wisdom is not more frequently found "in experience, and the gradual progress of human "affairs; and this is especially the case in all systems "of jurisprudence which are matured by the progress of

" human knowledge. Whether it be common, chancery " or admiralty law, we should be more instructed by " studying its present adaptations to human concerns, " than to trace it back to its beginnings.

" Every one is more interested and delighted to look " upon the majestic and flowing river than by following " its current upwards until it becomes lost in its moun- " tain rivulets."

In other matters, this Court has reversed its rule of jurisdiction and its views of the law. The *Dred Scott* doctrines; the Legal Tender cases; Osborne *vs.* Mobile, 16 Wall., 479, reversed in W. U. Tel. Co. *vs.* Texas, 105 U. S., 460, are instances, and there are many others.

Since the case of " The Harrisburg " was decided, in the case of

The Cephalonia " (*29 Fed. R., 332.*)

which decision was affirmed on appeal by Mr. Justice Blatchford sitting as Circuit Judge (*32 Fed. R., 112*).

Judge Benedict held that damages for loss of life may be recovered in Admiralty.

That was, to be sure, a suit *in personam* by an administratrix.

A tug had been sunk and several persons drowned by a collision which occurred within the Narrows in the harbor of New York, by the steamer Cephalonia, coming up astern of her.

Suppose the same steamer had followed the tug to a point on the high seas just without the three mile limit, and sunk her, and drowned the same parties under the some circumstances, would the admiralty in such case have lost its jurisdiction ?

Ubi jus ibi remedium. This ancient maxim and its complement *Lex semper dabit remedium*, are as expressive of the law, as their fellow maxim *Actio person-*

alis moritur cum persona : and quite as much entitled to furnish a rule of jurisdiction for a Court of Admiralty.

Numerous decisions of the Courts of the State of N. Y. of which these libellants are citizens have settled it, that, no action by an administrator will lie where the death complained of occurred without the State, unless proof is given that the statutes of State in which the death occurred authorized such an action

Whitford *vs.* Panama R. R. Co., 23 N. Y., 465.

Leonard *vs.* Columbia St. Nav. Co., 84 N. Y., 48.

Debevoise *vs.* N. Y. L. E. & W. R. R. Co., 98 N. Y., 377.

No statute law applies on the high seas, as between vessels and persons of different nations. There the Admiralty law reigns supreme ; and the Court of Admiralty is the only Court whose jurisdiction applies there.

In view of all these decisions and considerations, it cannot properly be said that the question upon which the jurisdiction in this case depends is so frivolous as not to need further argument.

No possible harm can come to the appellees, if this cause is allowed to keep its place upon the calendar, to be disposed of upon its merits, when it shall be reached in due order.

The learned counsel for the appellees, speaks of the injustice to the appellees of keeping $25,000 tied up in security for the several years that may elapse before the case can be reached for argument upon its merits.

Their hardship is as nothing compared with what that of the Appellants will be, if they are denied a hearing of their cause before this Court.

IX.

The motion to affirm should be denied.

JAMES PARKER,
Counsel for Libellants and Appellants.

IX.

The motion to affirm should be denied.

JAMES PARKER,
Counsel for Libellants and Appellants.

Supreme Court of the United States.

No. 1217.

OCTOBER TERM, 1888.

CATHERINE A. METCALFE *et al.*,

Appellants,

against

The Steamship "ALASKA," her engines, etc., Lady D. E. PEARCE *et al.*,

Appellees.

BRIEF

On part of Appellees on Motion to dismiss Appeal or affirm Judgment.

GEO. BETHUNE ADAMS,

Counsel for Appellees.

SUPREME COURT OF THE UNITED STATES.

On appeal from the Circuit Court of the United States for the Southern District of New York.

CATHERINE A. METCALFE *et al.*, Appellants,

against

The Steamship "ALASKA," her engines, etc., Lady D. E. PEARCE *et al.*, Appellees.

No. 1,217.

October Term, 1888.

Brief on part of Appellees on motion to dismiss Appeal or affirm Judgment.

POINTS.

I.

The sum in dispute in each case is not sufficient to give jurisdiction to this Court.

The amount originally claimed by the appellants was $5,000 in each case, and the stipulation for $25,000 was

given to release the steamer from the five claims respectively. No decree could then have been granted for any greater sum than $5,000. The amount in dispute in each case was the proportion the claims respectively bore to the amount of the stipulation.

The situation is precisely the same as if each of the parties had commenced a separate action for $5,000, and separate stipulations had been given in those amounts. The jurisdictional amount can not be affected by the joinder of the parties in one action.

Oliver *vs.* Alexander, 6 Pet., 143.
Gruner *vs.* U. S., 11 How., 163.
Rich *vs.* Lambert, 12 *Id.*, 347.
Rogers *vs.* Str. "St. Charles," 19 *Id.*, 108.
Sampson *vs.* Welsh, 24 *Id.*, 207.
Seaver *vs.* Bigelow, 5 Wall., 208.
Banking Assn. *vs.* Insurance Assn., 102 U. S., 121.
Chatfield *vs.* Boyle, 105 U. S., 231.
Elgin *vs.* Marshall, 106 *Id.*, 578.
Ex parte B. & O. R. R. Co., 106 *Id.*, 5.
Stewart *vs.* Dunham, 115 *Id.*, 61.

The cases of *Shields* vs. *Thomas*, 17 How., 3; *Market Co.* vs. *Hoffman*, 101 U. S., 112; *The Connemara*, 103 *Id.*, 754 (where the plaintiffs were interested collectively under a common title), and *The Mamie*, 105 *Id.*, 773 (where a question of jurisdiction in connection with limitation of liability, involving $65,000, was considered), stand on an entirely different principle.

Ex parte B. & O. R. R. Co., *supra*.

The instant this stipulation was given and substituted for the steamer, the question of amounts severally re-

coverable, was finally determined. The vessel could not have been again seized for the same claims.

Roberts *vs.* The Huntsville, 3 Woods, 387.
The White Squall, 4 Blatch., 103.
The Thales, 3 Ben., 327.
Id., 10 Blatch., 203.
The Nahor, 9 Fed. Rept., 213.

It is well settled that no liability can be incurred in proceedings *in rem* beyond the amount of the stipulation given for the release of the vessel, even if the claimant is the owner, and interest cannot be added to the amount of the stipulation which represents the value of the vessel when seized.

Henry's Admy. Juris. & Proc., 344.
The Webb, 14 Wall, 406.
The Ann Caroline, 2 Wall, 538.
The Wanata, 95 U. S., 601.

In *The Webb*, this Court modified the decree so as to reduce it to the amount of the stipulation, saying (p. 418): "The libel was *in rem* against the steamer, and "the decree cannot be for more than is within the juris- "diction of the Court."

In *The Ann Caroline*, the decree was also modified and it was said: "Settled rule is that where the value "of the vessel condemned in a cause of damage is in- "sufficient to pay the loss, it is not competent for the "Court to award damages against the owner beyond the "value or proceeds of the ship' (p. 549). "Stipulation "for value filed by the claimants was for that sum and "consequently the libellant is entitled to a decree "against the stipulators for that sum, as the value of "the vessel and no more, because they never agreed to be "bound for any greater sum. Argument of libellant is "that he is entitled to interest on that sum as against

" the stipulators for value, but it is a sufficient answer to " the proposition to say, that this Court has expressly " decided otherwise and we adhere to that decision " (p. 550).

In the *Wanata* the claimants appealed from decree of District Court, an additional bond was given by them on the appeal and interest was allowed to be recovered out of that.

After the release of steamer, the amendments increasing claims severally to $10,000, could have no effect.

Lee *vs.* Watson, 1 Wall., 337.

The burden of showing the amount in controversy to be sufficient to sustain the jurisdiction is upon the appellant.

Hagan *vs.* Foison, 10 Pet., 160

If the supplemental libellants here had recovered judgments for more than $5,000 each, the claimant could not have appealed to this Court, because the amount in dispute would have been but $5,000, in each case, under the stipulation. The statute does not give the plaintiff an advantage over the defendant under the same circumstances.

The Jesse Williamson, Jr., 108 U. S., 305.

There a claim was made for $27,000, and the vessel released on stipulation for $2,100. The libel was dismissed and the libellant appealed. A motion to dismiss for want of jurisdiction was granted, the Court holding that as the action was *in rem* the stipulation was conclusive as to the amount in dispute.

The Court, Blatchford, J., said (p. 310, 311): "The " libellant contends, however, that a decree for him for

"$27,000 against the vessel would establish the liability "of the claimants for that amount. But it could not "be contended that this would be so in any case but one "where the claimants were alleged and shown to have "been the owners of the vessel sued at the time of the "collision. In the case of The Enterprise, 2 Curtis, 317, "the record showed that the claimant of the vessel was "an owner of her during the voyage for which the wages "sued for were claimed, and that by his answer he con- "tested in that character the right to wages. For these "reasons it was held that the decree in the suit *in rem* "bound him personally as *res judicata*; that a libel *in* "*personam* against him would lie to execute that de- "cree; and that the matter in dispute in that case was "not the vessel or the existence of a lien on her. The "proceeds of the sale of the vessel were $13.90, the de- "cree was for more than $50, and $50 was the amount "necessary for jurisdiction on an appeal. Under these "circumstances an appeal was allowed.

There is no analogy in the case at bar to *The Enterprise*. This was an action for a tort of the steamer whereby a lien was claimed, occurring December 2, 1883. William Pearce, the claimant, whose estate the present appellees represent, did not become her owner until October 11, 1884.

B.—But even if the amount originally claimed had been $10,000 in each case, and bonds had been given accordingly, this Court would not have jurisdiction, because by the stipulation between the parties it was provided, "That both vessels were in fault" (fol. 63).

It followed from this agreement that the most the appellants could claim would be what would legally follow from an application of the ordinary admiralty rule, viz., that the damages should be divided.

This apportionment of damages would reduce the

amount to exactly $5,000., which is not sufficient to give jurisdiction. It must exceed that sum.

Walker *vs.* U. S., 4 Wall., 163.

The only answer, from a legal standpoint, that can be made to this contention is, that the deceased persons were not identified with the vessel in fault. The reply is: one, Christian Wolfe, was an owner, on the vessel, and necessarily identified with her acts (fol. 1), and the others were presumptively so. They were the "crew" (Opinion, fol. 48) of the vessel and responsible for her navigation. And that they were personally responsible for the accident is shown conclusively by the finding of the Court that their personal representatives could only recover one half of the damage for loss of personal effects. This contributory negligence is therefore found as a fact, and no appeal lies from that, nor could the question again be raised in the face of the stipulation, the object being "to avoid all questions excepting those of law arising out of the record."

Moreover, any other construction of the agreement would render the clause referred to meaningless and useless. It had an object, and that can at once be discerned and determined by the record, viz., that the deceased persons should be considered as identified with their vessel. Apart from their effect as a matter of law, the findings all through the case by the District Judge, the Commissioner and the Circuit Judge, regarded simply as circumstances surrounding the agreement, lead irresistibly to the conclusion that the intention was that these persons should be so considered. Under a familiar rule of construction the agreement should be upheld in all its parts.

Interest could not be added to give the Court jurisdiction, even if the action were *in personam*. It would be

discretionary with the Court in cases of this character, if claimed.

Hemminway *vs.* Fisher, 20 How., 255.
Lincoln *vs.* Claflin, 7 Wall., 132.
Redfield *vs.* Iron Co., 110 U. S., 174.
Supreme Court Rules, No. 23. Par. 4.

And can not be added when the libel does not claim interest.

Udall *vs.* S. S. Ohio, 17 How., 17.

D.—It follows, therefore, that in any view of the action, if the decree dismissing the libel should be reversed, there could be no recovery to exceed $5000, in each case, and this Court consequently has no jurisdiction.

Where a want of jurisdiction is patent or can be readily ascertained by an examination of the record in advance of an examination of the questions on an argument of the merits, the Court will entertain and act upon a motion to dismiss for want of jurisdiction.

Semple *vs.* Hagar, 4 Wall., 431.
Clark *vs.* Hancock, 94 U. S., 493 *et passim.*

II.

The appeal was taken for delay only, and the question upon which jurisdiction depends is so frivolous as not to need further argument.

This case is not in any way distinguishable from

The Harrisburg, 119 U. S., 199.

There, in an opinion rendered November 15, 1886, by the then Chief Justice of this Court, it was decided, without dissent, that a suit in admiralty can not be maintained in the Courts of the United States, to recover damages for the death of a human being on the high seas, or on waters navigable from the sea, which is caused by negligence.

Any consideration of the same question here would necessarily lead to the same result.

Either on the question of the original jurisdiction, as decided in *The Harrisburg*, or on the question of the jurisdiction of this Court, the appeal can only have been taken in the hope that delay might work a change in the decisions of the Court in both aspects. Such hope is manifestly frivolous.

Even if this Court has jurisdiction, the judgment should be affirmed. It is not the practice to retain such plain cases for argument.

Hinckly *vs.* Morton, 103 U. S., 764.
Micas *vs.* Williams, 104 Id., 556.
The S. C. Tryon, 105 Id., 267.

It is unjust to the appellees that they should have $25,000 tied up in security for the several years that will elapse before the case can be reached for argument on the merits.

III.

The appeal should be dismissed, or the judgment affirmed, with costs.

Respectfully submitted,

GEO. BETHUNE ADAMS,
Counsel for Appellees.

Supreme Court, U. S.
FILED.
MAR 12 1889
JAMES H. McKENNEY,

Supreme Court of the United States.

No. 1217.

OCTOBER TERM, 1888.

CATHERINE A. METCALFE, MARY E. NOBLE, AGNES ARNOLD, MARY E. WOLF and BELLA FORBLADE,

Appellants.

against

The Steamship "ALASKA," her engines, etc., LADY D. E. PEARCE, SIR WILLIAM GEORGE PEARCE, JAMES ROBERTSON and RICHARD BARNWELL, Executors of WILLIAM PEARCE, deceased,

Appellees.

NOTICE OF MOTION

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GEO. BETHUNE ADAMS,

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SUPREME COURT OF THE UNITED STATES.

On appeal from the Circuit Court of the United States for the Southern District of New York.

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Appellees.

No. 1217, October Term, 1888.

To JAMES PARKER, Esq.,
Counsel for Appellants.

Dear Sir.—Please to take notice that on the record herein, as amended by stipulation, filed January 30th, 1889, and on the following statement of facts and objects of motion, I shall move the Court, in the Court room thereof, in the Capitol, Washington, District of Columbia, on the 11th day of March, 1889, at the opening of Court, or as soon thereafter as counsel can be heard, under Rule Six, to dismiss the appeal herein or to affirm the judgment appealed from.

New York, February 8th, 1889.

Very truly yours,

GEO. BETHUNE ADAMS,
Counsel for Appellees.

Statement of Facts and Objects of Motion.

Facts.

This was an action *in rem* brought by the libellants in the United States District Court for the Southern District of New York, on the 13th day of November, 1884, to recover claims aggregating $18,100, for the loss of the pilotboat "Columbia," her furniture, &c., and the personal effects of the crew, occurring in consequence of a collision with the steamship "Alaska," on the night of December 2d, 1883, by which the pilotboat was sunk, the personal effects lost, and all the persons on board drowned (Libel, pp. 1 to 4, filed November 13, 1884, p. 6, fol. 13).

The collision happened on the Atlantic Ocean about twelve miles southeast from Fire Island Light, off the coast of Long Island, New York (Findings of Fact, p. 25, fol. 49).

On the 22d day of November, 1884, a supplemental libel was filed by the widows of the five persons drowned (the appellants here) to recover damages respectively for the loss of lives. It claimed as damages in each case the sum of five thousand dollars (Supplemental Libel, pp. 6 to 8; Amendment of Record, par. 1).

On the 20th day of November, 1884, William Pearce appeared as claimant of the "Alaska," and filed a stipulation for value in the sum of $20,000 to secure the release of the steamer from the claims of $18,100 for loss of pilotboat, her furniture, &c., and the personal effects of crew (p. 21, fol. 41; Amendment of Record, par. 2).

On the 25th day of November, 1884, the claimant filed a stipulation for value in the sum of $25,000 to secure the release of the steamer from said claims for loss of

life, that sum having been fixed by consent as her value for the purposes of the supplemental claims. This stipulation referred to the supplemental libel, named the supplemental libellants, and was conditioned to "abide by and pay the money awarded by the final de-"cree rendered by this Court or Appellate Court, if any "appeal intervene" (Amendment of Record, par. 3).

On the 27th day of May, 1886, "the said several libel-"lants in said supplemental libel named, by leave of "Court, amended their several prayers of said supple-"mental libel for damages so as to make their several "damages prayed for the sum of ten thousand dollars "each, instead of five thousand dollars, as thereinbefore "prayed for" (p. 22, fol. 43).

On the same day an interlocutory decree was entered, adjudging that the collision was occasioned by the mutual fault of the two vessels, and that the libellants, as owners of the vessels and representatives of the deceased persons, and the supplemental libellants "do each and all of them recover one-half of "their damages by each and all of them severally sus-"tained by reason of matters by each and all "of them severally alleged in the supplemental "libel by them in said cause filed, and by said "interlocutory decree, it was further ordered * * * "that said steamship 'Alaska' be condemned to pay "the said one-half of the said several amounts of dam-"ages," and referring it to a Commissioner "to take "proof of the sevoral interests of the respective libel-"lants, to ascertain the several amounts due to them for "their damages upon their several interests as the same "shall appear and report thereon" (p. 14, fols. 27, 28).

On the 15th day of November, 1886, the case of the "Harrisburg" was decided by the Court (119 U. S., 199).

On the 23d day of November, 1886, the Commissioner

filed his report in conformity with the terms of the interlocutory decree (pp. 22, 23, fol. 43).

On the 17th day of February, 1887, a final decree was entered in favor of libellants respectively for one-half of their damages, and dismissing the supplemental libel (pp. 13 to 17).

On the 28th day of February, 1887, by consent of the parties to the action, an order was entered: "That the "libellants may amend their libel so that the claim for "loss of lives shall be ten thousand dollars instead of "five thousand dollars" (p. 19, fol. 36).

The supplemental libel was constructively amended, as appears above, but no new libel was filed nor actual change made in the original libel, and it now remains on record as filed; amendments were intended to be made in the sums of ten thousand dollars in each case, and the claim of five thousand dollars loss of life of Thomas A. Metcalfe, as it appears on page 6, folio 13, of record, is a clerical mistake (Amendment of Record, Part 1).

The said order of the 28th day of February, 1887, further provided: "That no further security will be re-"quired on the appeal about to be taken by the parties "to the action, either for costs or otherwise (p. 19, fol 36).

On the 26th and 28th days of February, 1887, all the parties to the action appealed from the said final decree to the Circuit Court (pp. 18 to 25).

On the 8th day of December, 1887, an opinion was filed in the Circuit Court, by Wallace, J., containing his findings of fact and conclusions of law, by which it was determined that both vessels were in fault, and ordering a decree for the libellants, dividing the loss, and that the supplemental libel be dismissed for want of jurisdiction (pp. 25 to 31).

It was found as a fact by the Circuit Judge that the

collision happened on the 2d day of December, 1883 (p. 25, fol. 48), and that the claimant did not become the owner of the "Alaska" until the 11th day of October, 1884, and had no notice or information of the collision until after he had acquired his title (p. 27, fols. 52, 53).

On the 3d day of March, 1888, an agreement was made between the parties as follows:

"It is agreed that upon an adjustment of costs, and a "decree being entered in conformity with the opinion of "the Circuit Judge—

"(I.)—That the claimant will pay the amounts decreed "against the steamer therein, and that the libellants "will accept the same.

"(II.)—That no appeal shall be taken by either party, "except that the libellants in supplemental libel reserve "the right of appeal on the question of recovery of "damages for loss of life.

"(III.)—That both vessels were in fault.

"(IV.) That the "Alaska" was a British registered vessel and sailing under that flag."

"(V.) That any statutes and reports of decisions of the Courts of Great Britain, may be referred to on the appeal herein contemplated as though they had been regularly introduced in evidence in this Court."

"(VI.) That neither the supplemental libellants nor the claimants shall by this agreement be deemed to have waived any rights, either would have had if it had not been made, excepting as provided for herein, the object being to avoid all questions excepting those of law arising out of the record of which this agreement shall become a part (pp. 31, fols. 63–64)."

On the 16th day of March, 1888, a final decree was entered in the Circuit Court for one-half the several

amounts the libellants were found to have been damaged, aggregating the sum of $7,590.89, and dismissing the supplemental libel.

On the 17th day of March, the claimant paid this sum and obtained satisfaction of the decree (p. 34, fol. 70). The said stipulation for value in the sum of $20,000 has been cancelled of record (Amendment of record, par. 2).

The said stipulation for value of the sum of $25,000, given to secure the steamer from said claims for loss of life, remains of record and uncancelled in the District Court, and is the only stipulation ever given in the cases of supplemental libellants (Amendment of record, par. 3).

On the 10th of September, 1888, an appeal on the part of supplemental libellants from the said final decree of the Circuit Court, was taken and duly perfected to the October Term of this Court (pp. 35 to 40).

(For convenience of reference, the pages of original record as printed in the margin of the printed record, are used above as "folios." The Amendment of record referred to is printed at end of record, but not paged as a part thereof.)

Objects of Motion.

The objects of this motion are to have the appeal dismissed for want of jurisdiction of this Court, or to have the judgment of the Circuit Court affirmed, because it appears that the appeal was taken for delay only, and because the question on which jurisdiction depends is so frivolous as not to need further argument.

Dated New York, February 8th, 1889.

GEO. BETHUNE ADAMS,
Counsel for Appellees.

130-210

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 1173.

THE BALTIMORE AND POTOMAC RAILROAD COMPANY, PLAINTIFF IN ERROR.

vs.

THADDEUS A. HOPKINS.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED OCTOBER 1, 1888.

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1 *Declaration, &c. Filed Oct. 5th, 1883.*

In the Supreme Court of the District of Columbia.

THADDEUS A. HOPKINS, Plaintiff,
vs.
THE BALTIMORE AND POTOMAC RAILROAD COMPANY, Defendant. } At Law. No. 24799.

The plaintiff sues the defendant, a corporation duly chartered by the laws of the State of Maryland, having an office and doing business in the city of Washington, in the said District of Columbia, for that the plaintiff heretofore, to wit, before and at the time of the committing by the defendant of the grievances hereinafter mentioned, was and hitherto had been and still is lawfully seized and possessed of a certain lot of land situated in the said city, to wit, on the north side of Maryland avenue between Ninth and Tenth streets west, the said lot being known on the ground plat or plan of said city as part of lot numbered five, in square numbered three hundred and eighty-five, upon which said lot at and before the committing of said grievances had been erected and from thence hitherto hath stood and is now standing a frame dwelling-house, wherein the plaintiff and his family during all the time aforesaid inhabited and dwelt; that the plaintiff laid out and expended in the purchase of said premises and in improvements thereto a large sum of money, to wit, five thousand dollars; that the defendant, well knowing the premises, thereafter, to wit, on the 5th day of
2 October, A. D. 1880, wrongfully, improperly, and unlawfully and with intent to injure and damage the plaintiff maintained and used, and, from said day and year aforesaid, all the time hath and now doth wrongfully and unlawfully maintain and use, four railroad tracks or sidings upon and along said Maryland avenue immediately in front of said lot and dwelling-house of the plaintiff and between said Ninth and Tenth streets, upon which said railroad tracks or sidings the defendant was, and from said day and year aforesaid hath been and still is, accustomed to place freight cars, both loaded and empty, in great numbers, to wit, to the number of five hundred at one time, and to suffer the same to remain there for an unreasonable length of time, frequently for the space of twenty-four hours at a time, and to load and unload or cause or permit to be loaded and unloaded freight of divers kinds into and from said cars, thereby creating great noise and confusion and exciting large quantities of dust, which are blown into, upon, and over the said dwelling-house, and to move and shift said cars back and forth upon and along said tracks or sidings in front of and near to said lots and dwelling-house of the plaintiff by locomotive engines propelled by steam, improperly and unlawfully and to the great damage of the said dwelling-house and to the injury and annoyance of the plaintiff; and the defendant, on the said 5th day of October, A. D. 1880, and on divers other days between said day and the commencement

of this suit wrongfully, improperly, and unlawfully and with intent to injure and damage the plaintiff, itself and by its agents, did, by wrongfully and unjustly causing to be made and continued in said engines divers large and injurious
3 fires against the will of the plaintiff, make to issue and proceed therefrom large quantities of offensive and unwholesome cinders, soot, smoke, steam, vapors, and other gaseous effluvia, which entered the windows and doors of said dwelling-house and spread and diffuse themselves in, upon, over, and throughout the same, to the great and intolerable discomfit and inconvenience of the plaintiff, to the damage of the household furniture belonging to him in his said place of residence, and to the damage and injury of said dwelling-house; and the defendant during all the time aforesaid hath and now doth further molest and annoy the plaintiff and damage his said dwelling-house by the violent jars, concussions, and vibrations produced by wrongfully and unlawfully bumping together heavily loaded freight trains and cars on said tracks or sidings in front of and near to the said dwelling-house of the plaintiff, and by the puffing and hissing of said locomotive engines, and by the blowing off of steam therefrom while unlawfully standing on said tracks or sidings in front of and near to the said dwelling-house of the plaintiff, and while being unlawfully propelled back and forth as aforesaid in front of said house by the defendant or its agents in the process or for the purpose of shifting said cars and making up of freight trains on said avenue in the city aforesaid, and by the rumbling and jarring noises of said locomotive engines and cars of the defendant when being moved and propelled back and forth as aforesaid, and, further, by the unlawfully, continuously, and injuriously making or causing to be made on said tracks or sidings in front of and near to the said dwelling-house of the plaintiff, *and* night and by day, in and about said engines and cars on
4 the said fifth day of October, A. D. 1880, and on divers other days between said day and the commencement of this suit, divers loud, heavy, jarring, agitating, clattering, bumping, and battering sounds and noises, by means of which said several wrongful acts of the defendant the plaintiff has been and is greatly disturbed and disquieted, interrupted, incommoded, and annoyed in the peaceable and quiet use, occupation, and enjoyment of his said lot and dwelling-house. The walls and ceilings of said dwelling-house have been cracked and shaken down and the said house otherwise damaged. The said dwelling-house and the said lot have been seriously and materially diminished and depreciated in value, and the same rendered comparatively unsuitable as a place of human habitation, and the plaintiff has been thereby prevented from having so beneficial a use and occupation of said dwelling-house as he might and otherwise would have had, to the great and special damage and injury of the plaintiff in the sum of $5,000, and therefore he brings his suit.

2. The plaintiff sues the defendant, a corporation as aforesaid, for that the plaintiff heretofore, to wit, before and at the time of the

committing by the defendant of the grievances hereinafter mentioned, was and hitherto hath been and still is lawfully seized and possessed of a certain lot of land and dwelling-house situated in the city of Washington, in the District aforesaid, to wit, on the north side of Maryland avenue between Ninth and Tenth streets west, in said city, the said dwelling-house being known as No. 941 Maryland avenue southwest, in said city, in which said house and premises the plaintiff and his family during
5 all the time aforesaid inhabited and dwelt; that afterwards, to wit, on the 5th day of October, A. D. 1880 (the plaintiff being then and there in the actual use and occupation of said premises), the defendant, without right or lawful authority and unmindful of the rights of the plaintiff, maintained and used, and, from said day and year aforesaid, all the time hath and now doth wilfully and unlawfully maintain and use, on said Maryland avenue, in front of and near to the said premises of the plaintiff and between said Ninth and Tenth streets, a large number of railway tracks, to wit, four railway tracks or sidings; which said tracks from thence hitherto have been and now are used by the defendant, its agents and servants, for the storage thereon of cars loaded with hogs, cattle, and other live stock, cars loaded with guano, fertilizers, and other unsavory freight, and empty hog and cattle cars, when the same are not in actual use by the defendant; that the defendant, against the will and unmindful of the rights of the plaintiff, from said day and year aforesaid, all the time has and now does wrongfully, carelessly, negligently, and unlawfully store and leave standing upon said tracks or sidings, opposite the premises of the plaintiff and in close proximity thereto, a large number of hog, cattle, and live-stock cars, in a filthy and unwholesome condition, and cars loaded with guano, fertilizers, and other unsavory freights; which said cars, so left standing on said tracks by the defendant or its agents, emit and give forth noxious, noisome, and poisonous smells, odors, vapors, and stenches, which are carried into and upon the said dwelling-house and premises of the plaintiff, rendering the same unwholesome and uninhabitable, and greatly incommode, worry, vex, and annoy the plaintiff, and the said
6 lot and dwelling-house of the plaintiff, by reason thereof, have been and are greatly diminished and depreciated in value, and the plaintiff, by reason of the wrongful acts of the defendant last aforesaid, has suffered and sustained great and special damage and injury in the sum of $5,000, and therefore he brings his suit.

3. The plaintiff sues the defendant, a corporation duly chartered by the laws of the State of Maryland, having an office and doing business in the District of Columbia, for that whereas the plaintiff, before and at the time of the committing by the defendant of the grievances hereinafter mentioned, was and hitherto hath been and still is lawfully seized and possessed of a certain lot of ground situated and being in the city of Washington, in said District, to wit, on the north side of Maryland avenue between Ninth and Tenth streets west, and known on the plat of said city as part of lot num-

bered 5, in square numbered 385, upon which said lot is a dwelling-house, wherein the plaintiff and his family, during all the time aforesaid, inhabited and dwelt, the said dwelling-house being known as No. 941 Maryland avenue southwest, in said city; and whereas the said Maryland avenue between said streets before and at the time of the committing of said grievances had been and still of right ought to be an open, public street or common high— for all persons to go, return, pass and repass in, by, and with coaches, carts, wagons, and other vehicles, as well as on foot, at their free will and pleasure, to wit, at Washington, in the District aforesaid, and was used by the plaintiff and others as of right for access to and egress from said lot and dwelling-house, yet the defendant, well knowing the premises, against the will of the plaintiff and with intent to injure, incommode, and
7 annoy him as well as the public in the use and enjoyment of said Maryland avenue, and more particularly to prevent the plaintiff's and others' use of that portion of said avenue upon which the plaintiff's said lot abuts, to gain access to and egress from said lot and dwelling-house, did, on the 5th day of October, A. D. 1880, wrongfully, improperly, and unlawfully obstruct and from thence hitherto hath at divers and other times between said day and the commencement of this suit wrongfully, improperly, and wilfully obstructed said Maryland avenue by placing thereon freight and other cars in great numbers between said streets and suffering the same to remain there for an unreasonable length of time, frequently for the space of twenty-four hours at a time, and by loading and unloading, or causing or permitting to be loaded and unloaded, freight cars on the said avenue in front of and near to the said premises of the plaintiff, and by blocking the way with wagons and carts for the purpose of unloading freight, and by shifting its said freight and other cars back and forth on said avenue between said streets by locomotive engines propelled by steam, and by using said avenue between said streets for the general purposes of a freight yard or depot, and has thereby prevented the plaintiff as well as the public from passing and repassing on said Maryland avenue, and more particularly from using that portion of said avenue on which the plaintiff's said lot abuts, to gain access to and egress from said lot and dwelling-house and still obstructs said street or avenue as aforesaid and still prevents the plaintiff, as well as the public as aforesaid, whereby the said lot and dwelling-house of the plaintiff have been and are seriously and materially diminished in value, and the
8 plaintiff has thereby suffered and sustained great and special damage and injury in the sum of $5,000, and therefore he brings his suit.

4. And the plaintiff sues the defendant, a corporation as aforesaid, for that whereas the plaintiff, on the 5th day of October, A. D. 1880, was and hitherto hath been and still is lawfully seized and possessed of a certain lot of land, with a dwelling-house thereon, situated on the north side of Maryland avenue between Ninth and Tenth streets west, in the city of Washington, in said District of Columbia, the defendant on said day and continuously from thence hitherto has

unlawfully maintained and used, and still does wrongfully, wilfully, and unlawfully maintain and use four railroad tracks or sidings upon and along said Maryland avenue and in front of plaintiff's said lot of land and dwelling-house, and has thereby injured the said lot of land and dwelling-house to the great and special damage and injury of the plaintiff in the sum of $5,000, and therefore he brings his suit.

And the plaintiff claims $5,000 damages besides the costs of this suit.

L. G. HINE,
HAGNER & MADDOX,
Att'ys for the Plaintiff.

The defendant is to plead hereto on or before the first special term of the court occurring twenty days after service hereof; otherwise judgment.

L. G. HINE.
HAGNER & MADDOX,
Att'ys for Plaintiff.

9 *Summons. Issued Oct. 5th, 1883.*

In the Supreme Court of the District of Columbia, the 5 day of October, 1883.

THADDEUS A. HOPKINS, Plaintiff,
vs.
THE BALTIMORE AND POTOMAC RAILROAD COMPANY, Defendant. } At Law. No. 24799.

The President of the United States to the defendant, Greeting:

You are hereby commanded to appear in this court on the first day of its first special term occurring 20 days after service of this writ on you to answer the plaintiff's suit and show why he should not have judgment against you for the cause of action stated in his declaration.

Witness D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk*,
By J. R. YOUNG,
Ass't Clerk.

HINE, HAGNER & MADDOX, *Attorneys.*

NOTE.—The special terms of the court commence on the first Tuesday of every month except August, in which month there is no term of the court.

Marshal's Return.

10 Served copies of the declaration, notice to plead, affidavit, and this summons on the defendant, through Joseph K. Sharpe, sup't, the 8th day of October, 1884.

CLAYTON McMICHAEL, *Marshal.*

Motion for Bill of Particulars. Filed Jan. 3, 1884.

In the Supreme Court of the District of Columbia.

* * * * * * *

THADDEUS A. HOPKINS, Plaintiff,
vs.
THE BALTIMORE AND POTOMAC RAILROAD COMPANY, Defendant. } At law. No. 24799.

* * * * * * *

And now comes the said defendant in the above-entitled causes and moves the court to require the said several plaintiffs to furnish a bill of particulars in their respective causes, giving a particular and certain description of their respective pieces of property, either by metes and bounds or by subdivision and squares, and for cause assigns the following, to wit:

The said several declarations do not advise the defendant with reasonable certainty of the exact location of the lots of
11 ground and property alleged to have been damaged by the defendant's railroad.

ENOCH TOTTEN,
For Def't, B. & P. R. R. Co.

Court Proceedings.

Proceedings before the supreme court of the District of Columbia, holding a special term and circuit court in and for said District, commencing the third Monday, it being the 15th day, of October, A. D. 1883.

MONDAY, *October 15th, A. D.* 1883.

By order of Arthur MacArthur, justice, one of the justices of said supreme court, presiding, the court is opened by proclamation of the marshal pursuant to rule of court.

* * * * * * *

SATURDAY, *January 5th, A. D.* 1884.

Session resumed pursuant to adjournment, MacArthur, justice, presiding.

* * * * * * *

12 THADDEUS A. HOPKINS
vs.
THE BALTIMORE AND POTOMAC RAILROAD COMPANY. } At Law. No. 24799.

* * * * * * *

The above cases each coming on to be heard upon the defendant's motion to require the said several plaintiffs to furnish a bill of par-

ticulars in their respective causes, giving a particular and certain description of their respective pieces of property, and the same having been heard, it is considered that each and all of said motions be, and the same are hereby, overruled; and, on motion, leave is granted the defendant to demurrer or plead in each of above cases in ten days.

Demurrer. Filed Jan. 15, 1884.

In the Supreme Court of the District of Columbia.

THADDEUS A. HOPKINS
vs.
THE BALTIMORE AND POTOMAC RAILROAD COMPANY. } At Law. No. 24799.

13 And now comes the said defendant and says that the said plaintiff's declaration and each several count thereof is bad in substance.

ENOCH TOTTEN,
Attorney for Defendant.

NOTE.—Amongst the matters of law in support of said demurrer the following will be insisted upon:

First. The description of the premises in each count of the declaration is insufficient, indefinite, and uncertain.

Second. Each of the said counts improperly joins together and confuses two or more supposed causes of action and neither of said supposed causes of action are alleged and set forth with sufficient certainty.

Third. The second is based on the maintenance and use of a railroad and railroad tracks which are authorized by law so to be used and maintained, and the averments as to the use of said tracks are not sufficiently certain and definite.

Fourth. The third count is insufficient, indefinite, and uncertain because it does not sufficiently aver that the plaintiff was ever obstructed or interrupted in his use of said avenue or in his ingress to or egress from his permises.

Fifth. The fourth count is wholly based on alleged acts which the defendant is fully authorized by law to do, and the supposed cause of action is not stated with sufficient certainty.

14 Sixth. The said declaration and each and every count thereof is bad, because it appears therefrom that the plaintiff suffered no other or different inconvenience from the alleged acts of the defendant than did the public in general, and it does not allege any special injury to the plaintiff differing in kind from that which the whole community suffers.

Joinder in Demurrer and Note of Issue. Filed Jan. 17, 1884.

In the Supreme Court of the District of Columbia.

T. A. HOPKINS
vs.
THE BALTO. AND POTOMAC R. R. Co. } At Law. No. 24799.

The plaintiff says that his declaration and each separate count thereof is good in substance.

L. G. HINE,
HAGNER & MADDOX,
Att'ys for Plaintiff.

Note of Issue.

T. A. Hopkins, plaintiff; Balto. & Potomac R. R. Co., defendant. Hine, Hagner & Maddox, pl't'ff's att'ys; Totten, def't's att'y. Last pleading filed Jan. 17, 1884.
To the clerk.

15 *Court Proceedings.*

Proceedings before the supreme court of the District of Columbia, holding a special term and circuit court, commencing the third Monday, it being the 20th day, of October, A. D. 1884.

MONDAY, *October 20th, A. D.* 1884.

By order of Alexander B. Hagner, one of the justices of said supreme court, presiding, the court is opened by proclamation of the marshal, pursuant to rule of court.

* * * * * * *

SATURDAY, *November 1st, A. D.* 1884.

Session resumed pursuant to adjournment, Hagner, justice presiding.

* * * * * * *

THADDEUS A. HOPKINS
vs.
THE BALTIMORE AND POTOMAC R. R. Co. } At Law. No. 24799.

* * * * * * *

16 The above causes coming on to be heard upon the defendant's demurrer to the plaintiff's declaration, and the same having been heard, it is considered that the demurrer in each of above cases be, and the same is hereby, overruled, and, on motion, leave is granted the defendant to plead over in each of the above cases in thirty days.

Defendant's Pleas. Filed Jan. 10, 1885.

In the Supreme Court of the District of Columbia.

THADDEUS A. HOPKINS
vs.
THE BALTIMORE AND POTOMAC RAILROAD COMPANY. } At Law. No. 24799

Pleas.

And now comes the said defendant, and for pleas to said declaration of the said plaintiff says:

1. It is not guilty in manner and form as in said declaration alleged.

2. The said plaintiff was not at the time of the commencement of this action and never was seized of the said premises as in said declaration alleged.

17 3. The said plaintiff was not at the commencement of this action and never was possessed of the said premises in manner and form as in said declaration alleged.

4. The said supposed cause or causes of action did not accrue within three years before the commencement of this action.

5. The said supposed cause or causes of action did not accrue within one year before the commencement of this action.

ENOCH TOTTEN,
Att'y for Def't.

Replication to Pleas 1, 2, 3, *&* 4 *and Demurrer to Plea* 5. *Filed Jan.* 19, 1885.

In the Supreme Court of the District of Columbia.

THADDEUS A. HOPKINS
vs.
THE BALTO. AND POTOMAC RAILROAD COMPANY. } At Law. No. 24799.

The plaintiff joins issue upon the defendant's first, second, third, and fourth pleas, and the plaintiff says that the defendant's fifth plea is bad in substance.

L. G. HINE,
HAGNER & MADDOX,
Att'ys for Plaintiff.

NOTE.—One of the matters of law to be presented in sup-
18 port of the above demurrer to defendant's fifth plea is that there is no law limiting to one year plaintiff's right of action as set forth in his declaration.

Court Proceedings.

Proceedings before the supreme court of the District of Columbia, holding a special term and circuit court in and for said District, commencing the second Monday, it being the eleventh day, of May, A. D. 1885.

MONDAY, *May 11th, A. D.* 1885.

By order of Walter S. Cox, justice, one of the justices of said supreme court, presiding, the court is opened by proclamation of the marshal, pursuant to rule of court.

* * * * * * *

THADDEUS A. HOPKINS
vs.
THE BALTIMORE AND POTOMAC RAILROAD COMPANY. } At Law. No. 24799.

Upon hearing the plaintiff's demurrer in each of the above cases to the defendant's fifth plea in each case, it is considered that said demurrer in each case be, and the same is hereby, sustained.

19 *Motion and Notice of Motion for Rule for Bills of Particulars. Filed Oct.* 13, 1886.

In the Supreme Court of the District of Columbia.

* * * * * * *

THADDEUS A. HOPKINS
vs.
THE BALTIMORE AND POTOMAC RAILROAD COMPANY. } At Law. No. 24799.

And now comes the said defendant and moves the court for an order requiring the plaintiff in each of the above causes to furnish to the counsel for the defendant and file in each of said causes a statement in writing showing the particular dates, time or times, and places at which he expects or intends to prove that the defendant stored or left standing on the railroad tracks mentioned any car or cars loaded with hogs, cattle, or other live stock, or any car or cars loaded with guano or other fertilizers, or any empty hog and cattle cars, and the number of such cars so left stored or standing on such tracks on each occasion, and the length of time such car or cars were so left stored or standing on each occasion on said tracks, and that such statement of particulars be so furnished within a reasonable time, and that the several plaintiffs be precluded from
20 giving evidence upon the trial of any such acts not specified in such statement or bill of particulars.

ENOCH TOTTEN,
Att'y for Def't.

Take notice that on Monday, the 18th day of October, 1886, at the opening of court on that day, or as soon thereafter as counsel can be heard, I shall move the court for a rule upon the plaintiff in the above causes, according to the above motion.

ENOCH TOTTEN,
Att'y for Def't.

Messrs. Hagner & Maddox, att'ys for pl't'ff.

Service of the above motion and notice acknowledged this 13th day of October, 1886.

HAGNER & MADDOX,
Att'ys for Plaintiff.

Note of Issue. Filed Apr. 23, 1887.

In the Supreme Court of the District of Columbia.

THADDEUS A. HOPKINS
vs.
THE BALTIMORE & POTOMAC RAILROAD COMPANY. } At Law. No. 24799.

Hine, Hagner & Maddox, att'ys for plaintiff; Enoch Totten, defendant's att'y.

Last pleading filed Jan. 17, 1885.

21 *Court Proceedings.*

Proceedings before the supreme court of the District of Columbia, holding a special term and circuit court, division No. 1, in and for said District, commencing the third Monday, it being the 16th day, of May, 1887.

MONDAY, *May 16th, A. D.* 1887.

By order of Walter S. Cox, justice, presiding, one of the justices of said supreme court, the court is opened by proclamation of the marshal, pursuant to rule of court.

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TUESDAY, *May 17th,* 1887.

Session resumed pursuant to adjournment, Cox, justice.

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THADDEUS A. HOPKINS, Pl't'ff,
vs.
THE BALTIMORE AND POTOMAC R. R. Co., Def't. } At Law. No. 24799, Cal. 43.

Now comes here as well the plaintiff, by his attorneys, Messrs. Hine, Hagner & Maddox, as the defendant, by its attorney,
22 Mr. Totten, and a jury of good and lawful men of this District, to wit, John D. Patten, Henry H. Pinkney, Frederick A. Schmidt, Rozier J. Varnell, Millard Metzger, Edward Godey,

Charles C. Bryan, George W. Cissel, John W. Allen, Thomas B. Queen, Charles W. Wood, and Calvin T. S. Brent, who, being duly sworn to try the issue above joined, after a partial hearing of the case, are respited until the meeting of the court to-morrow morning.

WEDNESDAY, *May* 18*th*, 1887.

Session resumed pursuant to adjournment, Cox, justice, presiding.

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THADDEUS A. HOPKINS, Pl't'ff,
vs.
THE BALTIMORE AND POTOMAC R. R. Co., Def't. } At Law. No. 24799.

Now again come here the parties aforesaid, in manner aforesaid, and the same jury that was respited yesterday, who, after a further hearing of the case, are again respited until the meeting of the court to-morrow morning.

23 THURSDAY, *May* 19*th*, 1887.

Session resumed pursuant to adjournment, Cox, justice, presiding.

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THADDEUS A. HOPKINS
vs.
THE BALTIMORE AND POTOMAC RAILROAD CO. } At Law. No. 24799.

Now again come here the parties aforesaid, in manner aforesaid, and the same jury that was respited yesterday, who, after a further hearing of the case, are again respited until the meeting of the court to-morrow morning.

* * * * * * *

FRIDAY, *May* 20*th*, 1887.

The court resumes its session pursuant to adjournment, Justice Cox presiding.

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24 THADDEUS A. HOPKINS
vs.
THE BALTIMORE AND POTOMAC RAILROAD CO. } At Law. No. 24799.

Now again come here the parties aforesaid, in manner aforesaid, and the same jury that was respited yesterday, who, after a further hearing of the case, are again respited until the meeting of the court Monday morning next.

MONDAY, *May* 23*d*, 1887.

The court resumes its session pursuant to adjournment, Justice Cox presiding.

THADDEUS A. HOPKINS
vs.
THE BALTIMORE AND POTOMAC RAILROAD CO. } At Law. No. 24799.

Now again come here the parties aforesaid, in manner aforesaid, and the same jury that was respited yesterday, and who, after the case is given them in charge, on their oath say they find the issue in favor of the plaintiff, and assess his damages by reason of the premises at the sum of one thousand three hundred and twenty-eight dollars, besides costs. Therefore it is considered that the plaintiff recover against said defendant one thousand three hundred and twenty-eight dollars, in manner and form aforesaid assessed, and $51.55 for his costs of suit, and have execution thereof.

25 *Motion for New Trial on Exceptions. Filed May* 27, 1887.

In the Supreme Court of the District of Columbia.

THADDEUS A. HOPKINS
vs.
BALTO. & POTOMAC RAILROAD, Defendant. } At Law. No. 24799.

And now comes the said defendant and moves the court to set aside the verdict and judgment herein and grant a new trial on exceptions.

ENOCH TOTTEN,
For Def't R. R. Co.

Bond for Appeal to General Term. Filed Jun- 21, 1887.

In the Supreme Court of the District of Columbia, the 4th day of June, 1887.

THADDEUS A. HOPKINS, Plaintiff,
vs.
THE BALTIMORE AND POTOMAC RAILROAD COMPANY, Defendant. } No. 24799.

The defendant having appealed to the general term from the judgment pronounced herein on the 23d of May, 1887, in the circuit —, and John Cassels, surety for said appeal, for themselves and each of them, their and each of their heirs and
26 personal representatives, appearing and submitting to the jurisdiction of the said general term, hereby undertake to abide by,

perform, and pay its judgment, which they agree may be pronounced against all of them.

BALTIMORE AND POTOMAC RAILROAD COMPANY, *Appellant*,
By E. T.
JOHN CASSELS, *Surety*.

Approved:
W. S. COX, *J.*

Court Proceedings. Filed Oct. 1st, 1887.

THADDEUS A. HOPKINS, Pl't'ff,
vs.
THE BALTIMORE AND POTOMAC R. R. Co., Def't, } At Law. No. 24799.

Now again comes here the defendant, by its attorney, and tenders to the court here its bills of exceptions to the rulings of the court on the trial of this cause, and prays that they may be duly signed, sealed, and made a part of the record now for then, which is done accordingly.

27 *Exceptions.* (*Filed Oct.* 1, 1887. *R. J. Meigs, Clerk.*)

In the Supreme Court of the District of Columbia.

THADDEUS A. HOPKINS
vs.
THE BALTIMORE & POTOMAC RAILROAD COMPANY. } At Law. No. 24799.

At the trial of this cause the plaintiff, to maintain the issues on his part, gave evidence to the jury tending to show that on the 10th day of May, 1875, he purchased a lot in square 385, in the city of Washington, District of Columbia, being a part of lot 5, in said square, situated on the north side of Maryland avenue, between 9th and 10th streets southwest; that said lot had a frontage
28 of 24 feet on Maryland avenue by a depth of 69 feet, and was improved by a two-story and basement frame dwelling-house containing 10 rooms; that the said house was then and is now known as No. 941 Maryland avenue southwest; that the plaintiff has resided therein since 1873, and that he lived in said house and paid rent for the same for two years prior to the time he purchased it.

That at the time of the purchase of said property by the plaintiff there were two railroad tracks on Maryland avenue, between 9th and 10th streets, in front of the plaintiff's premises, which were used for the through freight and passenger business and for the passage and repassage of passenger and freight trains; that no cars were stopped or parked there at that time; that nearly opposite the plaintiff's premises, on square 386, there was a depot or freight station used by the defendant company during and since the war and

now used by the said defendant company for merchandise freight, and that the only entrance to the said depot or freight station was at 10th street and from the west.

At the time of the commencement of this action there were five railroad tracks on Maryland avenue in front of the plaintiff's premises, two of which were there prior to the time of his said purchase of the said property and three of which have been laid by defendant company at different times since its incorporation, the last track being put down about the year 1880; that between the 5th day of October, 1880, and the 5th day of October, 1883, four of the said tracks were used by the defendant company for storing and parking their cars, both loaded and empty, for making up and breaking up freight trains, for shifting cars, and for delivering freight; that the north track, nearest to the plaintiff's premises, was commonly known as the "through" track and was reserved for the passage and repassage of through trains; that the south track was used continually for the delivery of freight, and the three middle tracks
29 for the purposes of shifting cars and for making up and breaking up freight trains and for storing cars; that cars were constantly stored on the said tracks in front of the plaintiff's premises, and that the inside tracks were almost constantly filled with them, and that each track will hold from 11 to 15 cars each, and that an average of about 50 freight cars stood there all the time.

And thereupon to further maintain the issues on the part of the plaintiff, his counsel asked him several questions, to which answers were given by the said witness, and which questions and answers are as follows, to wit:

Q. You could not walk across the street in front of your house, could you?

A. No, sir; not at any time without going over to 9th or 10th streets.

Q. What have you got to say about 9th and 10th streets; could you cross the street there?

A. Sometimes I could not; not without waiting probably five or ten minutes.

To which last question and the answer thereto the counsel for the defendant objected at the time; but the court overruled the said objection and allowed the said question to be asked and the answer thereto to be given to the jury; to which ruling of the court the counsel for the defendant then and there duly excepted, and the said exception was noted at the time upon the minutes of the court, and the counsel for the defendant prays the court to sign and seal this its first bill of exceptions, which is accordingly done, now for then, this 29th day of September, A. D. 1887.

W. S. COX, *J.* [SEAL.]

And thereupon, after the signing and sealing of first bill of exceptions, which is made a part hereof, the plaintiff, to further maintain the issues on his part, gave evidence to the jury tending to show that miscellaneous freights were unloaded on the said avenue, between

9th and 10th streets, in front of the plaintiff's premises, consisting of iron, bricks, coal-oil, hay, fish, oysters, cabbages, potatoes, hogs, sheep, calves, guano, and almost everything in the freight
30 line; that from the coal so unloaded, when the wind was from the south, there was a great deal of dust and dirt, which was carried into the plaintiff's house and which blackened the walls, ceilings, carpets, and which soiled the bed linen; that from the guano cars, which were left standing on the tracks in front of the plaintiff's premises, there emanated disagreeable and offensive odors; that car-loads of cabbages stood upon the said tracks at the said place and were there unloaded, and that in the process of such unloading the decayed cabbages and the loose cabbage leaves were thrown from the cars onto the surface of the public street; that spoiled melons were also thrown from the cars upon the surface of the street; that in unloading cars containing potatoes the rotten ones were thrown from the cars onto the surface of the public street and were permitted to remain there until the car was unloaded, which would be from one to three days, when they would be taken up and put into the car and taken away; that the odors from these sources were disagreeable and offensive and penetrated the plaintiff's house and disturbed him and his family in the enjoyment of their dwelling-house.

The plaintiff, to further maintain the issues on his part, gave evidence to the jury tending to show that cars loaded with cattle and other live stock, such as hogs, sheep, calves, and race-horses, stopped on the said tracks in front of the plaintiff's premises, both in the day-time and at night; that filthy cattle cars, in which cattle had been transported, stood upon the said tracks "quite a number of times," and that on one occasion such a car stood immediately in front of the plaintiff's door from Saturday night until Sunday night; that the odors from said cars were disagreeable and offensive, and rendered the plaintiff and his family uncomfortable in the occupation of their home.

And thereupon the plaintiff's counsel, to further maintain the issues on his part, asked the said plaintiff several questions,
31 to which answers were given, which questions and answers are as follows, to wit:

Q. Will you tell the jury whether you have ever known, from seeing or hearing them, of cattle cars, or cars loaded with calves, pigs, and sheep, standing out there?

A. Yes, sir; I have.

Q. In the day-time or at night?

A. Both day and night.

Q. What inconvenience, if any, came to you from them?

A. I was very much annoyed from the noise that they kept up. We heard the calves bleating there all night.

Mr. TOTTEN: If the court please, I do not believe that you can admit this testimony under the declaration.

The COURT: That is all in the declaration. Go on.

Mr. TOTTEN: I take an exception to that, your honor. I do not think that testimony is admissible.

To each of which several questions and answers the counsel for the defendant objected, as noted at the time; but the court overruled the said objections and allowed the said questions to be asked and the evidence to be given to the jury; to which ruling of the court the counsel for the defendant then and there duly excepted, and the said exceptions were noted at the time upon the minutes of the court, and the counsel for the defendant prays the court to sign and seal this its second bill of exceptions, which is accordingly done, now for then, this 29th day of September, A. D. 1887.

W. S. COX, *J.* [SEAL.]

And thereupon, after the signing and sealing of the first and second bills of exceptions, which are made a part of this exception, the plaintiff, to further maintain the issues on his part, gave evidence to the jury tending to show that the switching of cars and the making up and breaking up of freight trains went on nearly all the time—day and night—with the exception of three or four
32 hours between 11 or 12 o'clock at night and 2 or 3 o'clock in the morning, Sundays excepted; and that the noises from this cause were very loud and disturbed and broke up the sleep of the plaintiff and his family, and that ordinary conversation was interfered with.

And thereupon counsel for the plaintiff asked him several questions, to which answers were given; which said questions and the answers thereto are as follows, to wit:

Q. What have you got to say about the shifting of cars? When does that go on?

A. They commence between 2 and 3 o'clock in the morning. Sometimes they are shifting up to 11 or 12 o'clock at night.

Q. Is that daily?

A. Yes, sir; that is daily, except Sunday.

Mr. TOTTEN: Now, if the court please, in the matter of the shifting of cars, the railroad company has a right to shift cars there. We have a right to put a car there, and if, incidentally, we unload it that is where the transgression begins and that is where it ends.

The COURT: If you store cars on the street and shift these cars into trains and out of trains that is incidental to the storage. It is one of the means in which you use the street. They can show the shifting of cars that were parked in the street. That is what I understand the shifting to be limited to, and it will have to be limited to that.

Mr. TOTTEN: I object to any testimony on the subject of shifting and moving cars back and forth at this place, and I take an exception.

By Mr. MADDOX:

Q. Mr. Hopkins, how is this process of shifting cars that stand out in front of your door conducted?

Mr. TOTTEN: I object to that.

The COURT: Let the witness understand that his testimony should be confined to these cars that you say were parked out on the street and to the shifting of these cars by the engine. The inquiry
33 is now confined to the cars that are standing and parked out there in the street.

By Mr. MADDOX:

Q. Mr. Hopkins, discriminate as nearly as you can about this process of shifting; how the cars left in front of your house are shifted and moved back and forth.

A. I will state that in connection with what they call their freight depot there is very little shifting done. There is very little shifting done in what they call the freight yard, except for the freight that is to be unloaded for this city exclusively, and the balance of the shifting is done in the public streets, in front of my premises, for making up freights.

To each of which several questions and the answers thereto the counsel for the defendant objected as made and noted, but the court overruled the said several objections and allowed the said questions to be asked and the evidence to be given to the jury; to which ruling of the court the counsel for the defendant then and there duly excepted, and the said several exceptions were noted at the time upon the minutes of the court, and the counsel for the defendant prays the court to sign this its third bill of exceptions, which is accordingly done, now for then, this 29th of September, A. D. 1887.

W. S. COX, *J.* [SEAL.]

Ella Lipphard, a sister of plaintiff and a member of his family, testified that she had frequently noticed filthy stock-cars standing near plaintiff's house all day Sunday.

Mrs. Byers, plaintiff's mother, who lived with him all the time, testified as follows, in reply to the question—

"What did they do with these cars that stood there at night?"

"A. Some of them stand there and are shifted up and down and taken away. I never noticed particularly what was done with them; all I know is that our comforts have all been taken
34 away from us. We have been deprived of every comfort by these noises and by these odors, and we don't live in any peace whatever; that is the sum and substance of the whole matter. Our home comforts are all destroyed; they are all gone. It is a continuous noise. It is not to-day or to-morrow; it is a continual thing. We can't sleep. We can't eat with any satisfaction on account of these odors, and we can't sleep on account of the noises. We can't keep our house clean. We can't keep clean at all. If we change our clothing or our bed linen or wash our face or hands, in a few moments we are just as bad as we were before."

And thereupon the plaintiff, to further maintain the issues on his part, gave evidence to the jury tending to show that the constant presence of the yard engine in front of the plaintiff's premises while engaged in its work of shifting filled the atmosphere with smoke

and cinders and dust, which entered the plaintiff's house in large volumes, necessitating increased labor and annoyance to his wife, and blackening his walls and furniture; that the constant rumbling back and forth of heavy engines and trains so being shifted and the concussions produced by bumping together heavily loaded trains and cars shook the plaintiff's house and cracked and injured the plastering therein; that the cars were frequently taken out of trains by defendant company near 11th street and were sent down to the grade between 9th and 10th streets, unattended by a brakeman, where they came into collision with cars standing in front of the plaintiff's premises and creating loud and battering noises; that the dust and smoke and the bad odors necessitated the closing of windows in plaintiff's premises during the hot days and nights of summer to keep out the smoke, dust, noise, and stenches; that the track nearest to the plaintiff's premises was used as a through track and from 30 to 40 trains a day passed over it.

And thereupon the plaintiff rested.

And thereupon the defendant, to maintain the issues on its part, gave evidence to the jury tending to show that its railroad line was completed and that trains began to pass over it on the second day of July, 1872; that at the time when its railroad was constructed the northernmost track, being the track on Maryland avenue nearest to the plaintiff's premises, and one other track were in use by the Alexandria and Washington Railroad Company, and that the said northernmost track was still there and is and has been used for the purposes of the passage and repassage of through trains to and from the South, and that the other tracks were used for freight; that the defendant laid two tracks on Maryland avenue between said Ninth and Tenth streets prior to the year 1880, and that since that time there have been in all five railroad tracks along Maryland avenue between Ninth and Tenth streets, in front of plaintiff's premises used as aforesaid; that the freight depot or freight station of the defendant company is located in square numbered 386, nearly opposite to the premises of the said plaintiff, on the south side of Maryland avenue, and is enclosed by a tight board fence about eight feet high; that there are four sidings or tracks in said yard connected with the main line of the railroad in the neighborhood of Eleventh street, which said tracks in the said yard are of sufficient capacity to hold about thirty-five cars at a time; that a freight car is from 30 to 35 feet long; that an average freight train contains about 30 cars, and that the length of an engine and tender is fifty feet; that the said tracks were in constant use in connection with the said freight station, and that the tracks on Maryland avenue between Ninth and Tenth streets, in front of the plaintiff's premises, were necessary and convenient for the proper use and occupation of the said freight station.

That all freight trains coming from the North or the East for the South habitually stopped between Ninth and Tenth streets on Maryland avenue, which point was considered and treated as the terminus of the railroad line from the North and from the South;

that at this point an engine bringing a freight train from
36 the north or south was detached from the train brought in therewith, which engine was taken to the round-house, on the corner of Sixth street and Virginia avenue; that as soon as the said engine was detached from its train the said train was taken charge of by the yard engine or switching engine, and such cars as were to go into the freight station were put therein and the cars which were intended for other places were deposited by the said switching engine on the said tracks to be taken away; that loaded cars were then taken out from the freight station and brought from other points and put into trains to be taken to their proper destination; that the engines bringing in trains were not permitted to stand on the street, but were immediately sent to the round-house as soon as a clear track could be obtained for that purpose; that the said switching engine was constantly engaged in the business of switching cars and trains at various points along Maryland avenue and Virginia avenue, and that it did not habitually stand in front of the plaintiff's premises on the said street for any length of time or longer than was necessary to perform the work which it was used to perform; that there was only one switching engine employed by the defendant company for switching purposes; that it was necessary in the transaction of the business of the defendant company to keep clear the northernmost track, being the track nearest to the plaintiff's premises, and also the three inside tracks had to be kept in condition for the passage and repassage of the trains; and that the track next to the defendant's freight station, between the said streets, being the most southerly track, was used by the consignees of freight for the purpose of unloading the same into wagons and carrying it away; that the three inside tracks were almost constantly used for the purpose of making up and breaking up freight trains in connection with the defendant's freight station and business generally and for the passage and repassage of trains, and that cars were permitted to stand on the said three inside tracks for such purposes
37 only; that cars were not unloaded on either of these three tracks, except in rare instances, and that wagons were not allowed to drive upon the said tracks for the purposes of loading and unloading, and that they did not drive over or stand there; that all of the stone unloaded from the cars at the said point were unloaded by the officers and agents of the District of Columbia, and were stones known as Belgian block, used for the purpose of paving the public streets of the city of Washington; that they were unloaded from the cars into wagons or carts by the said officers of the said District and taken away; that the defendant company itself never loaded or unloaded anything from or into cars at the said point, except on perhaps one occasion, during the three years in controversy, when railroad iron was unloaded for the purpose of being used to repair the tracks or to construct sidings in that immediate vicinity; that the defendant company owned no horses, wagons, or carts to be used for the purposes of unloading, and had no control of any such instrumentalities for such purposes; that neither cattle nor hogs had been unloaded during the time specified in the

declaration at the point in question, and that there were no means or instrumentalities to enable the defendant or any other person to unload cattle or hogs at the said point; that the cattle-shoot, a structure necessary to unload cattle from cars, was located at the yard of the company, at the corner of Fourteenth street and Maryland avenue, near the Long Bridge, where all cattle to be unloaded were, during this period, taken and unloaded; that in one or two instances only during the period mentioned had calves or sheep been unloaded at the said point, and that guano and other fertilizers had been unloaded there during that period on perhaps one or two occasions by accident; that guano and other fertilizers were habitually, during that period, unloaded in the freight-house, on square 386; that only five or six loads of cabbage had been received there, at the said point, in the three years mentioned in
38 the declaration; that no coal-oil tanks were unloaded from said tracks in front of plaintiff's premises, and none were received by the said defendant during the time mentioned in the declaration; that no more noise, smoke, cinders, and dust were made and created than was necessarily connected with the business of the defendant company at the said point, and several witnesses who reside in the said square, numbered 385, on the line of Maryland avenue, between Ninth and Tenth streets southwest, were called and gave testimony tending to prove that they were not in anywise annoyed or disturbed by smoke, cinders, noise, or the operations of the railroad company in front of their dwellings, and that their houses were not disturbed and shaken and their clothing was not soiled, and that there was no more noise, smoke, cinders, etc., than was necessarily connected with the operations of the defendant railroad company.

The defendant further gave evidence tending to show that cars were never permitted to run down from the vicinity of Eleventh street to the space on Maryland avenue between Ninth and Tenth streets and come into collision with standing cars, and that, although such accidents had occurred several times, it was owing solely to accidental causes, such as the breaking or disordered condition of a brake upon a car or to the breaking of a link or coupling; that any officer or employee of the company who permitted, by carelessness or otherwise, such a collision was punished by suspension or otherwise; that such a collision, if the car that ran down from Eleventh street was loaded, was very destructive to the property of the company, and that such accidents were guarded against with great care.

That about the year 1874 the Board of Public Works of the District of Columbia caused to be constructed on each side of the said five railroad tracks and sixty feet apart, curb lines constructed of granite curb-stones, which curb lines were sunk into the surface of the paved street and projected above the surface of the said street six inches and extended from Ninth
39 street along Maryland avenue down to the vicinity of the Long Bridge at Fourteenth street; that the railroad tracks on Maryland avenue between Ninth and Tenth streets were nearly flush with the top of the said curb lines and higher than the surface

of the surrounding streets; that the said curb line rendered it impossible, or nearly impossible, for vehicles of any kind to pass over the railroad tracks between the said transverse streets, and that the said curb lines were obstacles in the way of foot passengers crossing Maryland avenue between the said transverse streets; that Ninth and Tenth streets were never blocked by incoming or outgoing trains or by trains in the process of being made up for a longer time than was absolutely necessary, and that when it was necessary for trains of cars to be stopped upon and across either of the said streets the agents of the defendant company always cut the said trains and shifted one portion back and pulled the other portion forward so as to leave the said Ninth street or Tenth street unobstructed, and when it was necessary to make up the trains again they were connected and immediately moved away beyond the said streets; that cars loaded with cattle and empty cars which had been used in the transportation of animals were never left standing on the space in front of the plaintiff's premises for a longer period than was absolutely necessary to accommodate passing trains or for the making up and breaking up of freight trains; that sometimes during the period mentioned such cars were necessarily stopped on the said space, but that they never were allowed to stand there for any considerable length of time, and that they did not stand there at any time or on any occasion for a longer period than from five to twenty minutes, and no longer than was obsolutely necessary; that the switches necessary for the use of the freight warehouse or station were located on Maryland avenue between Tenth and Twelfth streets, and that such switches were used for the purpose of making the said freight stations available, and for passing trains off and on the main track, to enable the said trains to go to or come from the south and to pass on in either direction from the city of Washington; that there was also one switch between Eighth and Ninth streets which was used in connection with the old track of the Alexandria and Washington railroad, over which the passenger business of the defendant company was conducted; that during the period involved in this cause between twenty-seven and thirty regular passenger trains per day passed over the tracks in front of the plaintiff's premises, and that eight regular freight trains and frequently many extra trains passed over the said railroad tracks daily in front of the premises of the plaintiff; that the engines used by the defendant company were the best that are known in the business, and that the employees of the said defendant are skilled and capable men; that the distance from the stone yard and cattle-shoot of the company, located at the junction of 14th street and Maryland avenue, to the entrance to the freight station on 10th street was about 600 yards; that the said streets between Tenth and Twelfth streets were necessary to get cars into or out of said stone yard; that the width of Maryland avenue in front of the plaintiff's premises is 160 feet from building line to building line, the width of the sidewalk is 20 feet, the width of the wagon way between the sidewalk and the curb line of the railroad company on either side is 30 feet; that the distance between the two railroad

curb lines is 60 feet; that a wagon or cart unloading from a car standing on the tracks would not prevent the passing and repassing of any wagon or vehicle; that the transverse streets and the roadways on said avenue are paved with stone called Belgian block, which paving was done by the officers of the District of Columbia at the time the said railroad curbing was set; that the grades of the public street along Maryland avenue, from the Long Bridge to Ninth street, were fixed and determined by the officers of the
41 District of Columbia and not by the officers or agents of the said defendant company.

The defendant further gave evidence to show the location of the said freight-house and the locality in question generally by the introduction of a map, which map is conceded by counsel on both sides to be correct, and the same is hereto annexed and marked Exhibit "A," with bill of exceptions, and is referred to as a part hereof. (For map see end of record, p. 73.)

The defendant, to further maintain the issues on its part, gave evidence to the jury tending to show that engines were not permitted to stand upon the tracks in front of the plaintiff's premises for an unreasonable length of time or for any longer than was necessary in the conduct of the business of the defendant company; that the engine would not stand on the said tracks for more than from 10 to 15 minutes, and that it was very seldom that the engine stood there for that length of time; that there was only one engine at work in the yard of the defendant company, and that this one engine did all of the shifting connected with the business of the said defendant company between the tunnel and the Long Bridge, a distance of about — miles; that ever since the operation of the said railroad began the defendant had owned, maintained, and used a passenger station at the corner of 6th street S. W. and S. B St., and freight stations at the corner of 14th St. S. W. and Md. avenue—on the south side of Md. Ave., between 9 and 10th streets—and, since the spring of 1883, a freight station at the junction of Delaware avenue and Virginia avenue, and that its round-house and repair shop during the period in question was located on the corner of Virginia avenue and 6th street S. W.; that in July, 1883, a switch was extended from the main tracks of the defendant's railroad on Md. Ave., near 13th street S. W., to the coal yards of Johnson and Mr. Willis, situated south of Md. Ave., near 14th street S. W.

Thereupon, all the testimony being closed, the plaintiff, by
42 his counsel, prayed the court to instruct the jury on the evidence set forth herein, and in the first, second, and third bills of exceptions, which are hereby referred to as a part of this exception, as follows:

4. If the jury find from the evidence that from the 5th day of October, 1880, to the bringing of this action the plaintiff was the owner of a lot of ground and dwelling-house on the north side of Maryland avenue, between 9th and 10th streets southwest, in the city of Washington, D. C., and in possession and occupation of said premises during said period, and that the defendant during said pe-

riod and in front of said premises, the said dwelling-house of the plaintiff, for the purpose of there loading and unloading and delivering freight and for moving and shifting its cars, so loaded or unloaded, back and forth, in front of said premises of the plaintiff by locomotive engines propelled by steam, and that said loading and unloading and delivery of freight, if any, and said moving and shifting of cars, if any, were attended with loud and disagreeable noises, which could be distinctly heard in plaintiff's said dwelling, and that soot and cinders were thrown from said engine while so engaged into and upon said dwelling-house of the plaintiff, and that said soot and cinders were so thrown into and upon said dwelling-house and premises in such quantities and so frequently as to be an annoyance and inconvenience to the plaintiff and his family, and to injure and soil the walls and furniture in said dwelling-house; and further find that any of said cars, if any, were in a filthy condition and any of said freight, if any, so loaded and unloaded was of an unsavory character and engendered foul and disagreeable odors and stenches, which were carried into said dwelling-house in such quantities and so frequently as to annoy and offend the plaintiff and his family, and that such noises were of such daily and nightly occurrence and so distinctly heard in said dwelling-house as to annoy, harass, and disturb the plaintiff and his family
43 living therein, and that said noises and said soot and cinders and said odors and stenches interfered with the comfortable occupation and enjoyment by the plaintiff of his said dwelling-house, then the plaintiff is entitled to recover in this action.

To the granting of which prayer the counsel for the defendant objected, but said objection was overruled and the said prayer was by the court allowed and read to the jury; whereupon the defendant, by its counsel, duly excepted to the granting and reading of said prayer, and the said exception was noted at the time upon the minutes of the court; and the counsel for the defendant prays the court to sign and seal this its 4th bill of exceptions, which is accordingly done, now for then, this 29th day of September, A. D. 1887.

W. S. COX, *J.* [SEAL.]

Thereupon, all the testimony being closed, the plaintiff, by his counsel, prayed the court to instruct the jury on the evidence set forth in the 1st, 2d, 3rd, and 4th bills of exceptions, which are hereby referred to as a part of this exception, as follows:

5. If the jury find from the evidence that from the 5th day of October, 1880, to the bringing of this action the plaintiff was the owner of a lot of ground and dwelling-house on the north side of Maryland avenue, between Ninth and Tenth streets southwest, in the city of Washington, D. C., and in possession and occupation of said premises during said period, and that the defendant during said period, or any part of it, caused or permitted its locomotive engines to stop on said avenue between said streets and in front of said dwelling-house of the plaintiff and to remain there longer than was necessary in the conduct of its through business and to the full

and careful use and enjoyment of its freight depot or station abutting on the south side of said avenue, between said streets, and that said engines, so as aforesaid stopped and remaining, made puffing and hissing noises and sounds, which could be distinctly
44 heard in said plaintiff's dwelling-house, and emitted and gave forth soot, cinders, and heated steam and disagreeable and disgusting odors and stenches; and that said noises and sounds, if any, were of such daily and nightly occurrence, and were so distinctly heard in said dwelling-house as to annoy, harass, and disturb the plaintiff and his family living therein and that said soot, cinders, and heated steam, if any, and said odors and stenches, if any, were carried into and upon the said premises of the plaintiff in such quantities and so frequently as to be an annoyance and inconvenience to the plaintiff and his family, and that said noises and sounds and that said soot, cinders, and heated steam and odors and stenches interfered with the comfortable enjoyment by the plaintiff of his said dwelling-house, then the plaintiff is entitled to recover in this action.

To the granting of which prayer the counsel for the defendant objected, but said objection was overruled and the said prayer was by the court allowed and read to the jury; whereupon the defendant, by its counsel, duly excepted to the granting and reading of said prayer, and the said exception was noted at the time upon the minutes of the court; and the counsel for the defendant prays the court to sign and seal this its 5th bill of exceptions, which is accordingly done, now for then, this 29th day of September, A. D. 1887.

W. S. COX, *J.* [SEAL.]

Thereupon, all the testimony being closed, the plaintiff, by his counsel, prayed the court to instruct the jury on the evidence set forth in the 1st, 2d, 3d, and 4th bills of exceptions, which are hereby referred to as a part of this exception, as follows:

6. If the jury find from the evidence that from the 5th day of October, 1880, to the bringing of this action or during any part of said period the defendant used any of the railroad tracks on Maryland avenue between said streets and in front of said premises of
45 the plaintiff for the storage thereon of cars loaded with cattle or other live stock or cars loaded with guano or other bad smelling freights or empty stock cars in a filthy condition, and that any of said cars, if any, so stored on side tracks emitted and gave forth disagreeable and disgusting odors and stenches which were carried into said dwelling-house in such quantities and so frequently as to annoy, harass, and disturb the plaintiff and his family living therein and to interfere with the comfortable enjoyment by the plaintiff and his family of the said dwelling-house, then the plaintiff is entitled to recover in this action.

To the granting of which prayer the counsel for the defendant objected, but said objection was overruled and the said prayer was by the court allowed and read to the jury; whereupon the defendant, by its counsel, duly excepted to the granting and reading of said

prayer, and the said exception was noted at the time upon the minutes of the court; and the counsel for the defendant prays the court to sign and seal this its 6th bill of exceptions, which is accordingly done, now for then, this 29th day of September, A. D. 1887.

W. S. COX, *J.* [SEAL.]

Thereupon, all the testimony being closed, the plaintiff, by his counsel, prayed the court to instruct the jury on the evidence set forth in the first, second, third, and fourth bills of exceptions, which are hereby referred to as a part of this exception, as follows:

7. If the jury find for the plaintiff under the instructions given, then the proper measure of damages is such sum as will reasonably compensate the plaintiff for the annoyances, discomforts, and inconveniences, if any, to which he and his family may have been subjected during the period of time embraced in this suit, but the plaintiff is not entitled to recover for any annoyances, discomforts, or inconveniences to himself or his family or for any injury
46 to the use and enjoyment of said dwelling-house which resulted from such uses of Maryland avenue by the defendant as were reasonably incident to the careful conduct of its through business and to the maintenance and careful use of its freight depot or station, abutting on the south side of said avenue between said 9th and 10th streets southwest.

To the granting of which prayer the counsel for the defendant objected, but said objection was overruled and the said prayer was by the court allowed and read to the jury; whereupon the defendant, by its counsel, duly excepted to the granting and reading of said prayer, and the said exception was noted at the time upon the minutes of the court; and the counsel for the defendant prays the court to sign and seal this its seventh bill of exceptions, which is accordingly done, now for then, this 29th day of September, A. D. 1887.

W. S. COX, *J.* [SEAL.]

Thereupon, all the testimony being closed, the plaintiff, by his counsel, prayed the court to instruct the jury on the evidence set forth herein and in the first, second, third, and fourth bills of exceptions, which are hereby referred to as a part of this exception, as follows:

8. The defendant company, under its charter, had no right to convert Maryland avenue between 9th and 10th streets into a freight yard by using the same for loading or unloading its cars, or to encumber said place with cars by leaving them standing there an unreasonable time when not in use, or to use said part of the avenue for making up freight trains or shifting the same, except so far as may be reasonably necessary for the purpose of carefully carrying cars out of said station over the different tracks for the purpose of making up freight trains; and, if the jury shall find from the evidence that the defendant company did use said parts of Maryland avenue between the times named in the declaration for such loading or unloading of cars or encumbered the same by leaving the

47 cars standing there an unreasonable time when not in use, and used the same for making up and shifting its freight trains (except in so far as was reasonably necessary in connection with the careful carrying of such cars into the freight station or the careful carrying of such cars out of the station over the different tracks for the purpose of making up freight trains), and shall further find that such acts on the part of the defendant interfered with the comfortable enjoyment by the plaintiff of his dwelling-house, No. 941 Maryland avenue, then the plaintiff is entitled to recover.

To the granting of which prayer the counsel for the defendant objected, but said objection was overruled and the said prayer was by the court allowed and read to the jury; whereupon the defendant, by its counsel, duly excepted to the granting and reading of said prayer, and the said exception was noted at the time upon the minutes of the court; and the counsel for the defendant prays the court to sign and seal this its 8th bill of exceptions, which is accordingly done, now for then, this 29th day of Sept., A. D. 1887.

W. S. COX, *J.* [SEAL.]

Thereupon the defendant's counsel asked the court to grant the following prayers, and they were accordingly granted, to wit:

1. The defendant is entitled to make such careful use of the tracks between 9th and 10th streets on Maryland avenue as may be necessary for the lawful use and enjoyment of its freight depot or station opposite the plaintiff's premises and on square 386.

2. The plaintiff is not entitled to recover anything in this case for noise, smoke, odors, or any other inconveniences suffered by him or his family by reason of the lawful use by the defendant of the freight station or the tracks in the street in front of the plaintiff's property; and the burden of proof is upon the plaintiff to point out to the jury by satisfactory testimony the acts of the defendant

48 which were unlawful and unauthorized, if any such there were.

3. The plaintiff, under his declaration and upon the evidence, cannot recover anything under or upon the third and fourth counts of his declaration.

5. If the jury shall find from the evidence that the Board of Public Works or the Commissioners of the District of Columbia erected or caused to be erected a stone curb higher than the surface of the adjacent parts of Maryland avenue on each side of the railroad tracks, in front of the plaintiff's premises, on said Maryland avenue between 9th and 10th streets, and raised the grade of the street between said curb line, then the defendant is not liable to the plaintiff for any inconvenience or obstruction caused by such curb lines.

6. The Board of Public Works or the Commissioners of the District of Columbia were authorized by law to erect the curb lines along the outside of the tracks of the defendant and to raise the grade between them, and the said board and their successors had and have lawful authority to maintain the same.

10. The plaintiff, under the declaration in this case and upon the evidence, cannot recover for injury or inconvenience caused by any

obstruction or obstructions in or upon Maryland avenue without showing special damage to himself.

14. The defendant possesses the lawful right in the conduct of its business to place its trains containing cars loaded with cattle, hogs, or other animals, or vegetables, fruit, fertilizers, or other odoriferous freight, on the tracks in front of the plaintiff's premises for such a reasonable time as may be necessary to enable other trains to pass and also to enable the defendant to take cars out of and to put cars into such trains, and before any damages can be assessed in favor of the plaintiff because of the standing of such cars upon the tracks in front of the plaintiff's premises the plaintiff must show, by
49 satisfactory proof, that such cars on such occasion were kept standing on said tracks for an unreasonable length of time and that the plaintiff was thereby specially injured.

17. The defendant was authorized and empowered to unload railroad iron upon the surface of the streets in front of the plaintiff's premises for the purpose of repairing its tracks in front of the plaintiff's premises on Maryland avenue between 9th and 10th streets.

19. The defendant possessed the lawful right to use the several tracks on Maryland avenue between 9th and 10th streets for carefully passing and moving thereon its trains, either loaded or empty, north and south; and for any injury or inconvenience unavoidably caused by such passing and moving of trains the defendant is not liable.

Thereupon, the evidence on both sides having been closed, the defendant, by its counsel, prayed the court, upon the testimony set forth in the 1st, 2d, 3d, and 4th bills of exceptions, which are hereby referred to as a part of this exception, to instruct the jury as follows:

IX.

The jury in estimating damages are confined to the matters and things complained of by the plaintiff, which they may find, from the evidence, occurred on Maryland avenue, in front of the plaintiff's premises, between the west line of 9th street and the east line of 10th street.

But the court refused to grant said prayer and allow the same to be read to the jury; to which opinion and ruling of the court the defendant, by its counsel, duly excepted, and the exception was at the time noted upon the minutes of the court; and the defendant's counsel prays the court to sign and seal this its 9th bill of exceptions, which is accordingly done, now for then, this 29th day of Sept., A. D. 1887.

W. S. COX, *J.* [SEAL.]

50 Thereupon the defendant, by its counsel, prayed the court, upon the testimony set forth in the 1st, 2d, 3d, and 4th bills of exceptions, which are hereby referred to as a part of this exception, to instruct the jury as follows:

X.

The plaintiff is not entitled to recover anything on account of dust or noises caused by the loading and unloading of cars on or within the sixty-foot space between the lateral streets enclosed by the Board of Public Works of the District of Columbia.

But the court refused to grant said prayer and allow the same to be read to the jury; to which opinion and ruling of the court the defendant, by its counsel, duly excepted, and the exception was at the time noted upon the minutes of the court; and the defendant's counsel prays the court to sign and seal this its 10th bill of exceptions, which is accordingly done, now for then, this 29th day of September, A. D. 1887.

W. S. COX, *J.* [SEAL.]

Thereupon the defendant, by its counsel, prayed the court, upon the testimony set forth in the 1st, 2d, 3d, and 4th bills of exceptions, which are hereby referred to as a part of this exception, to instruct the jury as follows:

XI.

The space of sixty feet enclosed by the two lines of curb by the Board of Public Works within which are the tracks of the railroad and between the streets running north and south were set aside by the proper authorities of the District of Columbia for railroad purposes, and the plaintiff cannot recover under the pleadings in this case for any discomfort to him or his family or other injury caused by the loading or unloading of cars at that place.

51 But the court refused to grant said prayer and allow the same to be read to the jury; to which opinion and ruling of the court the defendant, by its counsel, duly excepted, and the exception was at the time noted upon the minutes of the court; and the defendant's counsel prays the court to sign and seal this its 11th bill of exceptions, which is accordingly done, now for then, this 29th day of September, A. D. 1887.

W. S. COX, *J.* [SEAL.]

Thereupon the defendant, by its counsel, prayed the court, upon the testimony set forth in the 1st, 2d, 3d, and 4th bills of exceptions, which are hereby referred to as a part of this exception, to instruct the jury as follows:

XII.

The plaintiff, upon the pleadings and evidence, cannot recover for any annoyance, discomfort, or inconvenience caused by loading or unloading cars in front of his dwelling-house.

But the court refused to grant said prayer and allow the same to be read to the jury; to which opinion and ruling of the court the defendant, by its counsel, duly excepted, and the exception was at the time noted upon the minutes of the court; and the defendant's counsel prays the court to sign and seal this its 12th bill of excep-

tions, which is accordingly done, now for then, this 29th day of September, A. D. 1887.

W. S. COX, *J.* [SEAL.]

Thereupon the defendant, by its counsel, prayed the court, upon the testimony set forth in the 1st, 2d, 3d, and 4th bills of exceptions, which are hereby referred to as a part of this exception, to instruct the jury as follows:

52 XIII.

The plaintiff upon the pleadings and evidence in this case is not entitled to recover anything on account of or by reason of smoke, soot, or cinders expelled from or noises made by the locomotive engines or trains of the defendant while carefully passing and repassing over the railroad tracks on Maryland avenue in front of the plaintiff's property.

But the court refused to grant said prayer and allow the same to be read to the jury; to which opinion and ruling of the court the defendant, by its counsel, duly excepted, and the exception was at the time noted upon the minutes of the court; and the defendant's counsel prays the court to sign and seal this its 13th bill of exceptions, which is accordingly done, now for then, this 29th day of Sept., A. D. 1887.

W. S. COX, *J.* [SEAL.]

Thereupon the defendant, by its counsel, prayed the court, upon the testimony set forth in the 1st, 2d, 3d, and 4th bills of exceptions, which are hereby referred to as a part of this exception, to instruct the jury as follows:

XIV.

The defendant has the legal right to the unlimited use of the tracks in the vicinity of its freight depot, in front of the plaintiff's premises, for the purposes of its freight depot between Ninth and Tenth streets, opposite the plaintiff's premises, provided such tracks are carefully and skilfully used by the defendant.

But the court refused to grant said prayer and allow the same to be read to the jury; to which opinion and ruling of the court the defendant, by its counsel, duly excepted, and the exception was at the time noted upon the minutes of the court; and the de-
53 fendant's counsel prays the court to sign and seal this its 14th bill of exceptions, which is accordingly done, now for then, this 29th day of September, A. D. 1887.

W. S. COX, *J.* [SEAL.]

Thereupon the defendant, by its counsel, prayed the court, upon the testimony set forth in the 1st, 2d, 3d, and 4th bills of exceptions, which are hereby referred to as a part of this exception, to instruct the jury as follows:

XV.

The defendant, so far as the plaintiff is concerned, is authorized by law to construct as many freight stations and depots as its proper officers may deem necessary, and to construct, maintain, and use as many tracks near them as may by such officers be deemed necessary for the convenient conduct of its business; and the defendant possessed the legal authority to construct and maintain the several tracks in front of the plaintiff's premises, and to use them for the proper and careful management of its business; and for inconvenience resulting from such use the plaintiff has no right to recover damages on the pleadings and evidence in this case; and before the plaintiff can have a right to recover he must show by satisfactory evidence the acts of the defendant which were unlawful, and that the plaintiff was specially injured thereby.

But the court refused to grant said prayer and allow the same to be read to the jury; to which opinion and ruling of the court the defendant, by its counsel, duly excepted, and the exception was at the time noted upon the minutes of the court; and the defendant's counsel prays the court to sign and seal this its 15th bill of exceptions, which is accordingly done, now for then, this 29th day of Sept., A. D. 1887.

W. S. COX, *J.* [SEAL.]

54 Thereupon the defendant, by its counsel, prayed the court, upon the testimony set forth in the 1st, 2d, 3d, and 4th bills of exceptions, which are hereby referred to as a part of this exception, to instruct the jury as follows:

XVI.

The plaintiff upon the pleadings in this case is not entitled to recover anything for inconvenience or injuries caused by the loading or unloading of cars in the street in front of his premises unless the jury shall be satisfied from the evidence that the defendant by its agents or employees actually did such loading or unloading.

But the court refused to grant said prayer and allow the same to be read to the jury; to which opinion and ruling of the court the defendant, by its counsel, duly excepted, and the exception was at — time noted upon the minutes of the court; and the defendant's counsel prays the court to sign and seal this its 16th bill of exceptions, which is accordingly done, now for then, this 29th day of Sept., A. D. 1887.

W. S. COX, *J.* [SEAL]

Thereupon the defendant, by its counsel, prayed the court, upon the testimony set forth in the 1st, 2d, 3d, and 4th bills of exceptions, which are hereby referred to as a part of this exception, to instruct the jury as follows:

XVII.

The defendant has the right to use the public streets to a reason-

able extent for the purpose of loading or unloading its cars, and therefore the plaintiff cannot recover upon the pleadings and proofs in this case for any annoyance or injury caused by so loading or unloading the cars.

But the court refused to grant said prayer and allow the same to be read to the jury; to which opinion and ruling of the court
55 the defendant, by its counsel, duly excepted, and the exception was at the time noted upon the minutes of the court; and the defendant's counsel prays the court to sign and seal this its 17th bill of exceptions, which is accordingly done, now for then, this 29th day of Sept., A. D. 1887.

W. S. COX, *J.* [SEAL.]

Thereupon the defendant, by its counsel, prayed the court, upon the testimony set forth in the 1st, 2d, 3d, and 4th bills of exceptions, which are hereby referred to as a part of this exception, to instruct the jury as follows:

XVIII.

The defendant company has a lawful right to the reasonable and careful use of the tracks between 9th and 10th streets on Maryland avenue to make up, as well as to break up, its trains, and no damage can be assessed against the defendant for any inconvenience or damages caused by such use of said tracks.

But the court refused to grant said prayer and allow the same to be read to the jury; to which opinion and ruling of the court the defendant, by its counsel, duly excepted, and the exception was at the time noted upon the minutes of the court; and the defendant's counsel prays the court to sign and seal this its 18th bill of exceptions, which is accordingly done, now for then, this 29th day of Sept., A. D. 1887.

W. S. COX, *J.* [SEAL.]

Thereupon the defendant, by its counsel, prayed the court, upon the testimony set forth in the 1st, 2d, 3d, and 4th bills of exceptions, which are hereby referred to as a part of this exception, to instruct the jury as follows:

XIX.

The defendant possessed the lawful right to carefully use
56 the tracks in front of the plaintiff's premises on Maryland avenue between Ninth and Tenth streets, so far as the same were necessary for the lawful and careful use of its stone yard and cattle-shoot therein at Fourteenth street.

But the court refused to grant said prayer and allow the same to be read to the jury; to which opinion and ruling of the court the defendant, by its counsel, duly excepted, and the exception was at the time noted upon the minutes of the court; and the defendant's counsel prays the court to sign and seal this its 19th bill of exceptions, which is accordingly done, now for then, this 29th day of September, A. D. 1887.

W. S. COX, *J.* [SEAL.]

Thereupon the defendant, by its counsel, prayed the court, upon the testimony set forth in the 1st, 2nd, 3d, and 4th bills of exceptions, which are hereby referred to as a part of this exception, to instruct the jury as follows:

XX.

The defendant at the time in question possessed the lawful right to carefully use the tracks in front of the plaintiff's premises on Maryland avenue, between Ninth and Tenth streets, so far as the same were necessary for the lawful and careful use of its round-house or engine-house on Sixth street and Virginia avenue.

But the court refused to grant said prayer and allow the same to be read to the jury; to which opinion and ruling of the court the defendant, by its counsel, duly excepted, and the exception was at the time noted upon the minutes of the court; and the defendant's counsel prays the court to sign and seal this its 20th bill of exceptions, which is accordingly done, now for then, this 29th day of September, A. D. 1887.

W. S. COX, *J.* [SEAL.]

57 Thereupon the defendant, by its counsel, prayed the court, upon the testimony set forth in the 1st, 2d, 3d, and 4th bills of exceptions, which are hereby referred to as a part of this exception, to instruct the jury as follows:

XXI.

Upon the pleadings and evidence in this cause the plaintiff cannot recover anything for any damage or inconvenience caused by cars left standing upon the space in question in front of his premises, if such cars were left standing there in connection with and for the purposes of the reasonable and careful management of the defendant's trains or in putting in or taking cars out of trains.

But the court refused to grant said prayer and allow the same to be read to the jury; to which opinion and ruling of the court the defendant, by its counsel, duly excepted, and the exception was at the time noted upon the minutes of the court; and the defendant's counsel prays the court to sign and seal this its 21st bill of exceptions, which is accordingly done, now for then, this 29th day of Sept., A. D. 1887.

W. S. COX, *J.* [SEAL.]

Thereupon the defendant, by its counsel, prayed the court, upon the testimony set forth in the 1st, 2d, 3d, and 4th bills of exceptions, which are hereby referred to as a part of this exception, to instruct the jury as follows:

XXII.

The defendant during the period covered by the declaration in this cause, so far as this cause is concerned, possessed lawful authority to carefully and skillfully use its tracks in front of the plaintiff's

premises on Maryland avenue between Ninth and Tenth
58 streets, so far as such use was reasonably necessary or convenient for carrying or moving cars containing freight or empty cars into or out of Johnson's and Willis' coal yards south of Maryland avenue and near 14th street.

But the court refused to grant said prayer and allow the same to be read to the jury; to which opinion and ruling of the court the defendant, by its counsel, duly excepted, and the exception was at the time noted upon the minutes of the court; and the defendant's counsel prays the court to sign and seal this its 22d bill of exceptions, which is accordingly done, now for then, this 29th day of September, A. D. 1887.

W. S. COX, *J.* [SEAL.]

Thereupon the defendant, by its counsel, prayed the court, upon the testimony set forth in the 1st, 2d, 3d, and 4th bills of exceptions, which are hereby referred to as a part of this exception, to instruct the jury as follows:

XXIII.

Upon the evidence in this cause the plaintiff is not entitled to recover anything upon the second count in his declaration.

But the court refused to grant the said prayer and allow the same to be read to the jury; to which opinion and ruling of the court the defendant, by its counsel, duly excepted, and the exception was at the time noted upon the minutes of the court; and the defendant's counsel prays the court to sign and seal this its 23d bill of exceptions, which is accordingly done, now for then, this 29th day of Sept., A. D. 1887.

W. S. COX, *J.* [SEAL.]

Thereupon the defendant, by its counsel, prayed the court, upon the testimony set forth in the 1st, 2d, 3d, and 4th bills of exceptions, which are hereby referred to as a part of this exception, to instruct the jury as follows:

59 XXIV.

Upon the pleadings and evidence in this cause the plaintiff is not entitled to recover anything for injury or inconvenience which may have been caused by the defendant's locomotive engines while standing on the space on Maryland avenue between 9th and 10th streets.

But the court refused to grant said prayer and allow the same to be read to the jury; to which opinion and ruling of the court the defendant, by its counsel, duly excepted, and the exception was at the time noted upon the minutes of the court; and the defendant's counsel prays the court to sign and seal this its 24th bill of exceptions, which is accordingly done, now for then, this 29th day of September, A. D. 1887.

W. S. COX, *J.* [SEAL.]

Thereupon the defendant, by its counsel, prayed the court, upon the testimony set forth in the 1st, 2d, 3d, and 4th bills of exceptions, which are hereby referred to as a part of this exception, to instruct the jury as follows:

XXV.

Upon the pleadings and evidence in this case the plaintiff is not entitled to recover anything for injury or inconvenience caused by noises or concussions created by coupling or bumping together cars or engines at the point in question.

But the court refused to grant said prayer and allow the same to be read to the jury; to which opinion and ruling of the court the defendant, by its counsel, duly excepted, and the exception was at the time noted upon the minutes of the court; and the defendant's counsel prays the court to sign and seal this its 25th bill of exceptions, which is accordingly done, now for then, this 29th day of September, A. D. 1887.

W. S. COX, *J.* [SEAL.]

60 Thereupon the defendant, by its counsel, prayed the court, upon the testimony set forth in the 1st, 2d, 3d, and 4th bills of exceptions, which are hereby referred to as a part of this exception, to instruct the jury as follows:

XXVI.

Upon the pleadings and evidence in this case the plaintiff is not entitled to recover anything for injury or inconvenience caused by cars loaded with hogs, cattle, or other live stock or empty hog and cattle cars left standing on said space between 9th and 10th streets on Maryland avenue, if such cars were so left there in connection with or for the purposes of the reasonable and skilful conduct of its trains and its business; and the burthen of proof rests upon the plaintiff to point out to the jury by satisfactory evidence that such cars left standing there, if any, were not so left standing there in connection with or for the purposes of such conduct of its trains and business.

But the court refused to grant said prayer and allow the same to be read to the jury; to which opinion and ruling of the court the defendant, by its counsel, duly excepted, and the exception was at the time noted upon the minutes of the court; and the defendant's counsel prays the court to sign and seal this its 26th bill of exceptions, which is accordingly done, now for then, this 29th day of Sept., A. D. 1887.

W. S. COX, *J.* [SEAL.]

Thereupon the defendant, by its counsel, prayed the court, upon the testimony set forth in the 1st, 2d, 3d, and 4th bills of exceptions, which are hereby referred to as a part of this exception, to instruct the jury as follows:

61 XXVII.

Upon the pleadings and evidence in this case the plaintiff is not entitled to recover anything for any injury or inconvenience which may have been caused by smoke from locomotive engines which were being used with reasonable care and skill in moving and switching cars into or out of trains or into or out of its stations or depots.

But the court refused to grant said prayer and allow the same to be read to the jury; to which opinion and ruling of the court the defendant, by its counsel, duly excepted, and the exception was at the time noted upon the minutes of the court; and the defendant's counsel prays the court to sign and seal this its 27th bill of exceptions, which is accordingly done, now for then, this 29th day of Sept., A. D. 1887.

W. S. COX, *J.* [SEAL.]

The court thereupon, voluntarily and on its own motion and upon the testimony set forth in the 1st, 2d, 3d, and 4th bills of exceptions, which are hereby referred to as a part of this exception, gave the following instruction to the jury:

It is not necessary for me to say more than a few words to you. This court has been very much exercised, in different forms of proceedings, touching the subject of the rights which this company has acquired under its charter in the District of Columbia. Congress allowed the company to run its road into the District, along certain streets and avenues, to a certain point—that is, to 9th street, where the present station is located. We have supposed that that implied a right to construct a station building and to construct tracks in the street; but if the business of the company increase beyond the capacity of that freight yard to accommodate it, we have thought that that was no reason which would justify the company in occupying the public streets for the purposes of a freight yard, and that they had no right to stow away or store away their cars and freight in
62 the public streets [*nor had they the right to occupy the streets in making up trains to dispatch north and south; but we thought that their duty was to acquire more property and to enlarge their freight yard for these purposes. If, in point of fact, without authority of law they did occupy the streets for these purposes it was an illegal thing; but if nobody was hurt by it it would simply be a public nuisance, which would be the subject of an indictment and would not give any private person a right of action against the company; but if, in addition to being a public nuisance, it became a grievance to private persons owning property in that neighborhood by reason of the obstruction of the street, the noise, and the disagreeable odors, then it was a private wrong, also, which these parties are entitled to have redressed*]; and to a certain extent we have endeavored to redress it by issuing an injunction. This present suit is an action to recover damages for the inconveniences and annoyances occasioned by these alleged illegal acts of this defendant. The suit was brought in 1883, and the statute of limitation is a bar to any recovery for any inconvenience occasioned before three

years in advance of this period—that is, before 1880—so that the plaintiff is only entitled to recover for such inconvenience and injury as he suffered between the 6th of October, 1880, and the 6th of October, 1883, when the suit was brought.

You have heard all the testimony as to the actual inconvenience and annoyance suffered by the plaintiff, and it is for you to assess the damages, if you find the evidence credible as to what was done there. I can aid you very little on that question.

There is one thing to be borne in mind, and that is that you are not to assess any damages for any supposed depreciation in the value of the plaintiff's property, because that evil which is complained of is not supposed to be permanent, inasmuch as the law provides a remedy for it. It is only a temporary injury. All that you can allow for is for the inconvenience experienced for the time being.

63 I should further caution you against supposing that the plaintiff is entitled to recover for all the inconvenience he may suffer in consequence of the railroad being located there at all. The railroad company has the right to lay its tracks there by authority of law, and everything which is the inevitable result of the legal use of the road are things which the law does not consider grievances and does not allow damages for. For example, the trains have a right to pass over the street, to stop there at the station, and to go on in each direction. That necessarily gives some inconvenience to everybody. The noise, the smoke, and the dust along the street is a disagreeable thing to the whole neighborhood, but inasmuch as the law authorizes that it is not the subject of a private action. It is only the illegal use of the street which will give a person a right of action against the company, and this I have already explained. The inevitable consequences of the road being located there and of trains traveling in a legal way over the road are what the law calls "*damnum absque injuria*"—that is, an injury without any wrong or damage. You will confine your consideration entirely to the temporary inconvenience occasioned by the unlawful occupation of the street for the purposes that have been mentioned.

I do not know that I can say anything more. It is not a matter that can be figured out by the rules of arithmetic and you must be governed by common sense.

And to such part of the foregoing charges as is inclosed in brackets and italicised by being underscored with pen and ink the counsel for the defendant excepted separately, and the justice presiding at the trial noted the said exception separately in his minutes before the jury retired to consider of their verdict; and counsel for defendant prays the court to save to him said exception separately in this bill of exceptions, to have the same force and effect as if said exception were set forth in a separate bill of exceptions, which is accordingly done, now for then, this 29th day of September, A. D. 1887.

W. S. COX, *J.* [SEAL.]

64 *Court Proceedings.*

Proceedings before the supreme court of the District of Columbia, sitting in general term, commencing fourth Monday, January 23, 1888.

MONDAY, *January* 23*d*, 1888.

Present, presiding, Chief Justice Edward F. Bingham, and Alexander B. Hagner, Charles P. James, and William M. Merrick, associate justices.

* * * * * * *

MONDAY, *March* 12, 1888.

Session resumed pursuant to adjournment.

Present: Chief Justice Bingham and Justices Hagner, James, and Cox.

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THADDEUS A. HOPKINS
vs.
THE BALTIMORE AND POTOMAC RAILROAD COMPANY. } At Law. No. 24799.

* * * * * * *

65 The rulings and judgments of the special term in these causes having been after argument submitted to this court on the 19th day of January last, and thereupon, because it appears to this court that there is no error in the said rulings and judgments, it is by this court considered that the said judgments be, and they are severally hereby, affirmed with costs, to be taxed by the clerk, and that the appellees have execution thereof.

66 Filed May 9, 1888. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia, the 9th day of May, 1888.

THADDEUS A. HOPKINS, Pl'ff,
vs.
THE BALTIMORE & POTOMAC R. R. Co., Def't. } No. 24799.

In error.

Know all men by these presents that we, The Baltimore and Potomac Railroad Company, as principal, and John Cassels, as surety, are bound unto the above-named Thaddeus A. Hopkins in the sum of three thousand dollars, to be paid to the said Thaddeus A. Hopkins, his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 9th day of May, 1888.

Whereas the above-named Baltimore and Potomac Railroad Company has prosecuted writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is that if the above-named Baltimore and Potomac Railroad Company shall prosecute its said writ of error to effect and answer all damages and costs if it shall fail to make good its plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

THE BALTIMORE & POTOMAC RAILROAD COMPANY,
By E. TOTTEN, *Att'y-in-Fact.* [SEAL.]
JOHN CASSELS. [SEAL.]

Sealed and delivered in presence of—

——— ———.

Approved this 9th day of May, 1888.

JOHN F. MILLER.

67 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the chief justice and justices of the supreme court of the District of Columbia, Greeting:

Because in the record and proceedings as also in the rendition of a judgment in a plea which is in the said court before you, between Thaddeus A. Hopkins, plaintiff, and The Baltimore and Potomac Railroad Company, defendant, being at law, No. 24799, a manifest error hath happened, to the great damage of the said ——, as by — complaint appears, and it being fit that the error, if any hath happened, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, therefore you are hereby commanded, if judgment be therein given, under your seal, distinctly and openly, to send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Honorable Samuel F. Miller, senior associate justice of the United States, this 9th day of May, in the year of our Lord 1888, and of the Independence of the United States the 112th.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk.*

68 *Assignment of Errors.*

Supreme Court of the District of Columbia.

THADDEUS A. HOPKINS
vs
THE BALTIMORE AND POTOMAC RAILROAD COMPANY. } Law. No. 24799.

And now comes the said defendant and says that in the record and proceedings in the above-entitled cause the supreme court of the District of Columbia erred as follows:

First. By denying the right of the defendant company to use its tracks in Washington on Maryland avenue between 9th and 10th streets in a lawful manner for the purpose of transacting its lawful business.

Second. In holding that the defendant company was not authorized by law to use its tracks between 9th and 10th streets on Maryland avenue, in Washington, for the purpose of shifting cars and making up and breaking up trains.

Third. In holding that the defendant company was not
69 authorized to use its tracks in the city of Washington, on Maryland avenue between 9th and 10th streets, for the purpose of placing thereon its cars or trains so long as might be reasonably necessary for putting cars in or taking them out of such trains.

Fourth. In holding that the defendant company was not authorized to use its tracks in Washington, on Maryland avenue between 9th and 10th streets, in connection with the proper and careful use of its stations at or near the said tracks.

Fifth. In holding that the defendant is not authorized to use all of its tracks for passing thereon its trains, engines, &c., in a lawful and skilful manner.

Sixth. In rejecting certain prayers of the defendant's counsel and in granting certain of the prayers of the plaintiff's counsel.

And the said defendant, The Baltimore and Potomac Railroad Company, prays that the judgment herein may be reversed.

ENOCH TOTTEN,
Counsel for Defendant.

70 Filed May 9, 1888. R. J. Meigs, clerk.

The United States of America to Thaddeus A. Hopkins, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the District of Columbia, wherein The Baltimore and Potomac Railroad Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff

in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel F. Miller, senior associate justice of the Supreme Court of the United States, this ninth day of May, in the year of our Lord one thousand eight hundred and eighty-eight.

SAM. F. MILLER,
Justice Sup. Court, U. S.

Copy received this 9th day of May, 1888.

SAM. MADDOX,
Att'y for T. A. Hopkins.

71 On this — day of ——, in the year of our Lord one thousand eight hundred and eighty- —, personally appeared —— —— before me, the subscriber, —— ——, and makes oath that he delivered a true copy of the within citation to —— ——.

—— ——.

Sworn to and subscribed the — ——, A. D. 188–.

—— ——.

72 AUTHENTICATION OF RECORD.

Clerk's Certificate.

CLERK'S OFFICE,
SUPREME COURT OF THE DISTRICT OF COLUMBIA.

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals together constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 16 day of May, 1888.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk,*
By J. R. YOUNG,
Assistant Clerk.

Justice's Certificate.

I, E. F. Bingham, chief justice of said court, do certify the foregoing attestation by R. J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal this 16 day of May, 1888.

E. F. BINGHAM, [SEAL.]
Chief Justice.

Clerk's Certificate to Justice's Official Character.

I, R. J. Meigs, clerk of said court, hereby certify that E. F. Bingham, whose genuine signature is subscribed to the foregoing certifi-

cate, was, at the time of signing and attesting the same, chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 16 day of May, 1888.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk*,
By J. R. YOUNG,
Assistant Clerk.

(Here follows map marked p. 73.)

Endorsed on cover: District of Columbia supreme court. No. 1173. The Baltimore & Potomac Railroad Company, plaintiff in error, *vs.* Thaddeus A. Hopkins. Filed October 1, 1888.